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Presidential Documents

Title 3—

The President

Proclamation 7543 of April 18, 2002

National Crime Victims' Rights Week, 2002

By the President of the United States of America

A Proclamation

Thirty years ago, advocates from some of the most crime-ridden neighborhoods of St. Louis, San Francisco, and Washington, D.C., founded the Nation's first assistance programs for crime victims. These centers were established in communities where violence was common, and they were clear about their mission: to bring help, hope, and healing to those who had suffered the effects of crime. The creation of these victim-assistance programs launched a movement that brought domestic violence shelters, homicide victim support groups, and rape crisis centers to help victims in cities and towns throughout the United States.

The crime victims' rights movement also brought changes in the way the criminal justice system treats and interacts with crime victims. In many cases, crime victims began to be treated with greater respect and to play an important role in criminal justice proceedings.

In 1982, President Ronald Reagan assembled a task force of nine national leaders to travel the country and listen to service providers, criminal justice professionals, and victims. The Task Force's Final Report listed 68 recommendations for meeting victims' needs, including the need for a Federal constitutional amendment. The momentum generated by this report helped spur passage of the Victims of Crime Act of 1984, which now supports thousands of assistance programs throughout the Nation. The Victim and Witness Protection Act of 1982 and other laws have given victims of Federal crimes many important rights.

All 50 States have now passed victims' rights laws, and more than half the States have amended their constitutions to guarantee rights for crime victims. However, more remains to be done to secure victims' rights. I support a Federal Constitutional Amendment to protect the rights of victims of violent crime.

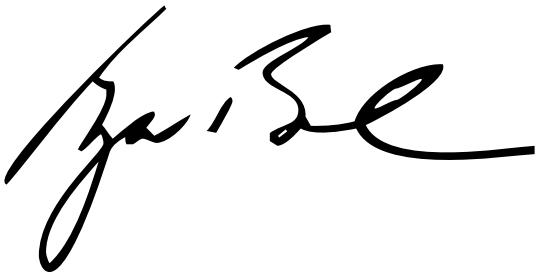
Our Nation has come to realize the tragic toll that crime takes, and we have developed the resources to ease crime's physical, emotional, and financial impact. This support network, which was already in place on September 11, made us better prepared to deal with the unspeakable pain and tragedy inflicted by the terrorist attacks. Along with the many firefighters, law enforcement officers, paramedics, and rescue workers who responded in New York, Washington, D.C., and Pennsylvania, hundreds of counselors, chaplains, social workers, volunteers, and victim service providers came together for the common purpose of helping the victims, the families, and our Nation.

My Administration has made the fight against crime a top priority. But when a crime does occur, I am dedicated to providing assistance and comfort to victims and to ensuring that the rights of victims are protected. At the time of their great trauma, crime victims deserve nothing less than our complete support.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 21 through April

27, 2002, as National Crime Victims' Rights Week. I encourage every community to embrace the cause of victims' rights and services and to advance them in all sectors of our society.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of April, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–10086
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Rules and Regulations

Federal Register
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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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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE07

Small Business Size Regulations; Size Standards and the North American Industry Classification System; Amendment

AGENCY: Small Business Administration (SBA).

ACTION: Correcting Amendment.

SUMMARY: This amendment corrects the small business size standard for North American Industry Classification System (NAICS) code 482111, Line-Haul Railroads. The correct size standard is 1,500 employees. This is a technical correction to the final rule correction that the Small Business Administration (SBA) published in the **Federal Register** on September 5, 2000.

DATES: Effective on April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA published what it believed was a corrected table of small business size standards based on industries as they are defined in NAICS on September 5, 2000 (65 FR 53533–53558). That table updated and replaced the table included in the final rule SBA published in the **Federal Register** on May 15, 2000 (65 FR 30836–30863). The table of size standards in the May 15, 2000, final rule included a number of errors that occurred during the printing process. Because the errors were significant in nature and number, SBA believed that merely listing the corrections was not sufficient. Therefore, on September 5, 2000, SBA published the new table to replace the table found in the May 15, 2000, final rule.

Corrected NAICS 482111

This amendment corrects the size standard for NAICS 482111, Line-Haul Railroads. The May 15, 2000, final rule represented the size standard as $500 million. The correct size standard was and is 1,500 employees. In the September 5, 2000, correction, SBA removed the dollar sign but overlooked correcting the numerical standard to 1,500 employees.

Justification for This Correction

SBA had proposed to adopt NAICS as a basis for size standards on October 22, 1999, (64 FR 57187–57286). In the proposed rule SBA set five guidelines for establishing size standards based on NAICS. The first guideline stated that if the NAICS industry were related to only one Standard Industrial Classification (SIC) system industry or to a part of one SIC industry, then the size standard would be the same for the NAICS industry as it was for the SIC industry.

The size standard for SIC 4011, Railroads, Line-Haul Operating, was 1,500 employees. NAICS 482111 is related to SIC 4011 in its entirety, and therefore, SBA's proposed rule applied the same 1,500 employee size standard to NAICS 482111. As stated above, there were errors that occurred in printing of the final rule, and SBA overlooked correcting this particular size standard.

SBA is therefore amending the published size standard for NAICS 482111 to 1,500 employees.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA corrects 13 CFR part 121 by making the following correcting amendment:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' under the heading Subsector 482—Rail Transportation, revise the entry for 482111 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
* * * * * * *		
Subsector 482—Rail Transportation		
482111 ...	Line-Haul Railroads.	1,500
* * * * *		

Gary M. Jackson,
Assistant Administrator for Size Standards.

[FR Doc. 02–9797 Filed 4–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–37–AD; Amendment 39–12717; AD 2002–08–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to one McDonnell Douglas Model DC–9–31 airplane. This action requires an inspection to determine if a certain alternating current (AC) cross-tie relay is installed; replacement of a certain AC cross-tie relay with a new AC cross-tie relay; and repetitive cleaning, inspection, repair, and testing of a certain AC cross-tie relay. This action is necessary to prevent AC cross-tie relay failures, which could result in internal arcing of the relay and smoke and/or fire in the cockpit and cabin. This action is

intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002, is approved by the Director of the Federal Register as of May 8, 2002.

The incorporation by reference of Sundstrand (Westinghouse) Overhaul Manual 24–20–46, Revision 8, dated August 15, 1983, was approved previously by the Director of the Federal Register as of October 26, 2001 (66 FR 51857, October 11, 2001).

Comments for inclusion in the Rules Docket must be received on or before June 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–37–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has previously received reports of an incident on a McDonnell Douglas Model DC–9 series airplane involving smoke in the cockpit and cabin. Investigation of the incident revealed that the smoke was caused by an internal phase-to-phase short circuit of the alternating current (AC) cross-tie relay resulting from migration of metallic dust from electrical contact wear and accumulation of this dust. Operators have reported other instances of AC cross-tie relay failure causing arcing in the electrical panel area. An internal phase-to-phase short circuit of the AC cross-tie relay caused by migration and accumulation of metallic dust, if not corrected, could result in internal arcing of the relay and smoke and/or fire in the cockpit and cabin.

Other Relevant Rulemaking

The FAA previously has issued AD 2001–20–15, amendment 39–12463 (66 FR 51857, October 11, 2001). That AD applies to certain Model DC–9 series airplanes and MD–88 airplanes, and requires an inspection to determine if a certain AC cross-tie relay is installed; replacement of a certain AC cross-tie relay with a new AC cross-tie relay; and repetitive cleaning, inspection, repair, and testing of a certain AC cross-tie relay. That AD refers to Boeing Alert Service Bulletin DC9–24A193, dated July 31, 2001, as an appropriate source of service information for accomplishment of certain required actions.

Explanation of Relevant Service Information

Since the issuance of AD 2001–20–15, the FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002. The procedures described in Revision 01 of the service bulletin are identical to those in the original issue of the service bulletin. However, the effectivity listing of Revision 01 of the service bulletin includes one additional Model DC–9–31 airplane, fuselage number (F/N) 0705, which is not listed in the original issue of the service bulletin. Because the airplane with F/N 0705 may be subject to the same unsafe condition as the airplanes identified in AD 2001–20–15, the FAA has determined that it is necessary to issue a new AD to require accomplishment of the actions described in Boeing Alert Service Bulletin DC9–24A193, Revision 01, on that airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent AC cross-tie relay failures, which could result in internal arcing of the relay and smoke and/or fire in the cockpit and cabin. This AD requires accomplishment of the actions specified in Revision 01 of the service bulletin described previously, except as discussed below. If a certain AC cross-tie relay is installed, this AD also requires cleaning, inspecting, repairing, and testing the relay, per Sundstrand (Westinghouse) Overhaul Manual 24–20–46, Revision 8, dated August 15, 1983.

Differences Between This Rule and Service Bulletin

Operators should note that, although the procedures described in Boeing Alert Service Bulletin DC9–24A193, Revision 01, specify maintenance of P/N 9008D09 series when it is beyond service interval limits, this AD does not require repetitive maintenance of AC cross-tie relays with that P/N because the unsafe condition has not been found on AC cross-tie relays with that P/N.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–37– AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–09 McDonnell Douglas: Amendment 39–12717. Docket 2002–NM–37–AD.

Applicability: Model DC–9–31 airplane, fuselage number 0705, certificated in any category.

Note 1: The requirements of this AD are identical to those in AD 2001–20–15, amendment 39–12463, which applies to Model DC–9 series airplanes and MD–88 airplanes listed in Boeing Alert Service Bulletin DC9–24A193, dated July 31, 2001.

Note 2: This AD applies to the airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For an airplane that has 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 prevent internal arcing of the alternating current (AC) relay and smoke and/or fire in the cockpit and cabin, accomplish the following:

Inspection

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to determine if an AC cross-tie relay, part number (P/N) 914F567–3, or Sundstrand (Westinghouse) AC cross-tie relay, P/N 914F567–4, is installed, per Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002.

Note 3: Inspections and replacements done before the effective date of this AD per Boeing Alert Service Bulletin DC9–24A193, dated July 31, 2001, are acceptable for compliance with the corresponding actions required by paragraphs (a) and (b) of this AD.

Replacement of Any AC Cross-Tie Relay, P/N 914F567–3

(b) If any AC cross-tie relay, P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 90 days after the effective date of this AD, replace AC cross-tie relay, P/N 914F567–3, with a Sundstrand (Westinghouse) cross-tie relay, P/N 9008D09 series or 914F567–4, per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002.

Maintenance of Sundstrand (Westinghouse) AC Cross-Tie Relay, P/N 914F567–4

(c) If any Sundstrand (Westinghouse) AC cross-tie relay, P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, per Sundstrand (Westinghouse) Overhaul Manual 24–20–46, Revision 8, dated August 15, 1983, at the later of the times specified in paragraph (c)(1) and (c)(2) of this AD, except as provided by paragraph (d) of this AD.

(1) Within 90 days after the effective date of this AD.

(2) Within 7,000 flight hours after installation of the Sundstrand (Westinghouse) AC cross-tie relay, P/N 914F567–4.

(d) For airplanes on which the flight hours since installation of any Sundstrand (Westinghouse) AC cross-tie relay, P/N 914F567–4, cannot be determined: Clean, inspect, repair, and test within 90 days after the effective date of this AD.

Repetitive Maintenance of Sundstrand (Westinghouse) AC Cross-Tie Relay, P/N 914F567–4

(e) Repeat the cleaning, inspection, repair, and test required by paragraphs (c) and (d) of this AD on all Sundstrand (Westinghouse) AC cross-tie relays, P/N 914F567–4, installed per paragraphs (b) and (c) of this AD at intervals not to exceed 7,000 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002; and Sundstrand (Westinghouse) Overhaul Manual 24–20–46, Revision 8, dated August 15, 1983; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC9–24A193, Revision 01, dated January 15, 2002 is approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Sundstrand (Westinghouse) Overhaul Manual 24–20–46, Revision 8, dated August 15, 1983, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 26, 2001 (66 FR 51857, October 11, 2001).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Hamilton Sundstrand, 4747 Harrison Avenue, P.O. Box 7002, Rockford, IL 61125–7002; as applicable. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9571 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–72–AD; Amendment 39–12725; AD 2002–08–16]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G, SA342J, and SA–360C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. That AD currently requires replacing each affected unairworthy main rotor head torsion tie bar (tie bar) with an airworthy tie bar and revising the limitations section of the maintenance manual by adding a life limit for certain tie bars. This amendment requires additional revisions to the limitations section of the maintenance manual by further reducing the life limit for certain tie bars. This amendment is prompted by an accident involving an ECF Model SA341G helicopter due to the failure of a tie bar. The actions specified by this AD are intended to prevent failure of a tie bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 21, 2001, the FAA issued an Emergency AD (EAD) 2001–19–51 to require replacing each affected unairworthy tie bar, revising the limitations section of the maintenance manual by adding a life limit for certain tie bars, and specifying that certain tie bars are not approved for installation on any helicopter. That EAD was published in the **Federal Register** on November 23, 2001 (66 FR 58663) as Amendment 39–12508. Those actions were prompted by an accident involving an ECF Model SA341G helicopter due to the failure of a tie bar. The ECF Model SA342J and SA–360C helicopters have tie bars identical to the one that failed on the ECF Model SA341G helicopter. Failure of a tie bar could result in loss of a main rotor blade and subsequent loss of control of the helicopter.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA of another accident involving a Model SA341G helicopter due to failure of the tie bar.

ECF has issued Alert Telex Nos. 01.29R1 and 01.39R1, both dated December 11, 2001, which declare certain tie bars unairworthy and impose a 7-year life limit for certain other tie bars as a precautionary measure pending further investigation. The DGAC classified these telex alerts as mandatory and issued AD Nos. 2001–587–041(A) R1 and 2001–588–047(A) R1, both dated December 26, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

This unsafe condition is likely to exist or develop on other ECF model helicopters of these same type designs. Therefore, this AD supersedes AD 2001–19–51 to retain the requirement to remove certain part-numbered tie bars, to add the requirement to remove certain other tie bars at specified intervals, and to revise the limitations section of the maintenance manual by further reducing the life limit. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions previously mentioned are required before further flight, and this AD must be issued immediately.

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 33 helicopters will be affected by this AD, that it will take approximately 8 work hours to replace the tie bars, and that the average labor rate is $60 per work hour. Required parts will cost approximately $13,335 per helicopter, assuming all 3 tie bars are replaced. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $445,895 ($13,815 per helicopter).

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 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 mailed 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. 2001–SW–72–AD.'' The postcard will be date stamped and returned to the commenter.

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

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 removing Amendment 39–12508, Docket No. 2001–SW–48–AD (66 FR 58663) and by adding a new airworthiness directive (AD), Amendment 39–12725, to read as follows:

2002–08–16 Eurocopter France: Amendment 39–12725. Docket No. 2001–SW–72–AD. Supersedes AD No. 2001–19–51, Amendment 39–12508, Docket No. 2001–SW–48–AD.

Applicability: Model SA341G, SA342J, and SA–360C helicopters with a main rotor head torsion tie bar (tie bar), part number (P/N):

341A31–4904–00, –01, –02, –03;
341A31–4933–00, –01;
360A31–1097–02, or –03, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a tie bar, loss of a main rotor blade, and subsequent loss of control of the aircraft, accomplish the following:

(a) Before further flight, remove each tie bar, P/N 341A31–4904–00, –01, –02, or –03; or 360A31–1097–02 or –03, from service.

(b) For each tie bar, P/N 341A31–4933–00 or –01:

(1) Before further flight, determine the date of initial installation on any helicopter using the date of manufacture if the date of installation cannot be determined.

(2) For each tie bar with 7 or more years time-in-service (TIS) since initial installation on any helicopter, remove within 5 hours TIS.

(3) For each tie bar manufactured before 1995 with less than 7 years TIS since initial installation on any helicopter, remove before accumulating 7 years TIS, within 300 hours TIS, or within 1 year, whichever occurs first.

(4) For each tie bar manufactured in 1995 or subsequent years with less than 7 years TIS since initial installation on any helicopter, remove before accumulating 7 years TIS, within 600 hours TIS, or within 2 years, whichever occurs first.

Note 2: Eurocopter France (ECF) Alert Telex Nos. 01.29R1 and 01.39R1, both dated December 11, 2001, pertain to the subject of this AD.

(c) This AD revises the limitations section of the maintenance manual by adding to the current life limit of 5000 hours TIS, the following additional alternative life limits for tie bars, P/N 341A31–4933–00 or 341A31–4933–01:

(1) Seven years TIS from initial installation on any helicopter or

(2) For tie bars manufactured before 1995, a life limit of 300 hours TIS or 1 year, or

(3) For tie bars manufactured in 1995 or subsequent years, a life limit of 600 hours TIS or 2 years, whichever occurs first.

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

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

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on May 8, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) ADs 2001–587–041(A) R1 and 2001–588–047(A) R1, both dated December 26, 2001.

Issued in Fort Worth, Texas, on April 11, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–9728 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–69–AD; Amendment 39–12718; AD 2002–08–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires a one-time inspection to identify all alloy steel bolts on the body station 1480 bulkhead splice, and corrective action if necessary. This action provides for optional terminating action for certain requirements of this AD. This action is necessary to detect and correct cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002-NM–69-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The FAA has received reports of broken alloy steel bolts on the body station (BS) 1480 bulkhead splice on Boeing Model 747 series airplanes. This splice connects the upper and lower pieces of the BS 1480 bulkhead and the overwing longeron. The maximum number of broken bolts found on an airplane was 10; that airplane was shown to be unable to withstand limit load. Broken splice bolts were found on one airplane with only 6,229 total flight cycles and 37,440 total flight hours. All of the broken splice bolts found on the airplanes were made from H11 alloy steel, which has been found to be susceptible to stress corrosion and consequent cracking and breakage. Cracked or broken bolts on the bulkhead splice, if not corrected, could result in structural damage and rapid depressurization of the airplane.

Related AD

AD 2001–11–06, amendment 39–12248 (66 FR 31124, June 11, 2001), applicable to certain Boeing Model 747 series airplanes, requires, among other things, repetitive inspections to detect cracking of certain areas of the BS 1480 bulkhead. AD 2001–11–06 focuses more on the skin splice plate and outer chord splice fitting than the mating bolts. However, airplanes on which the bulkhead splice areas have been modified in accordance with AD 2001–11–06 are excluded from the applicability of this AD. Also, inspections of the bulkhead splice area in accordance with AD 2001–11–06 meet the inspection requirements of this AD, provided that the bolts are inspected using magnetic particle methods before they are reinstalled.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, which describes procedures for a one-time inspection using a magnet to identify all alloy steel bolts on the BS 1480 bulkhead splice, and an inspection using torque test or ultrasonic methods of all alloy steel bolts to determine if any are cracked or broken. Corrective actions include replacement of any cracked or broken alloy steel bolts with Inconel 718 bolts; an ultrasonic inspection—if any bolt on the splice was found cracked—of any remaining alloy steel bolt that was inspected using torque test methods; and repetitive inspections of the remaining serviceable alloy steel bolts. The alert service bulletin specifies that replacement of all alloy steel bolts on the splice eliminates the need for the corrective actions for the alloy steel bolts.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracked or broken bolts on the BS 1480 bulkhead splice, which could result in structural damage and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between AD and Alert Service Bulletin

Although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the replacement of all alloy steel bolts on the BS 1480 bulkhead splice, which would terminate the torque tests and ultrasonic inspections required by this AD. However, the planned compliance time for this action is long enough to provide adequate notice and opportunity for prior public comment.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2002-NM–69-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–10 Boeing: Amendment 39–12718. Docket 2002–NM–69–AD.

Applicability: Model 747 series airplanes, certificated in any category, line numbers 1 through 750 inclusive, excluding airplanes on which the bulkhead splice areas have been modified in accordance with Plan ''B'' of AD 2001–11–06, amendment 39–12248.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 and correct cracked or broken alloy steel bolts on the body station (BS) 1480 bulkhead splice and consequent structural damage and rapid depressurization of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Inspect the BS 1480 bulkhead splice to identify all alloy steel bolts by using a magnet or, if applicable, detailed visual methods, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002.

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

(1) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 has NOT been accomplished within 15 months before the effective date of this AD: Inspect within 90 days after the effective date of this AD.

(2) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 HAS been accomplished within 15 months before the effective date of this AD: Inspect within 18 months since the most recent inspection.

Corrective Actions

(b) For each alloy steel bolt found during the inspection required by paragraph (a) of this AD: Before further flight, inspect those bolts using torque test or ultrasonic methods to detect cracks or breakage, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

(1) For each uncracked and unbroken alloy steel bolt found: Repeat the inspection specified by paragraph (b) of this AD thereafter at least every 18 months, until the optional terminating action of paragraph (d) of this AD is accomplished.

(2) For any cracked or broken bolt found: Before further flight, replace it with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

(3) If any cracked or broken bolt is found anywhere along the splice during any inspection required by paragraph (b) of this AD: Before further flight, reinspect, using ultrasonic methods, any remaining alloy steel bolts that were initially inspected using torque test methods, and replace any cracked or broken bolt with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

Magnetic Particle Inspection

(c) Plan ''A'' inspections required by AD 2001–11–06 are acceptable for compliance with the inspection requirements of paragraph (b) of this AD, provided a magnetic particle inspection and applicable corrective actions are performed on any alloy steel bolt removed during any Plan ''A'' inspection before the bolt is reinstalled. The magnetic particle inspection and corrective actions must be performed in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

Optional Terminating Action

(d) Replacement of all alloy steel bolts in the BS 1480 bulkhead splice with Inconel 718 bolts, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD, terminates the requirements of this AD.

Exceptions to Service Information

(e) If Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Spares

(f) As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(i) Except as required by paragraph (e) of this AD: The actions must be done in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9570 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–211–AD; Amendment 39–12716; AD 2002–08–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–601–3R and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B16 (CL–601–3R and CL–604) series airplanes. This action requires a one-time inspection to detect chafing and other damage of the integrated drive generator (IDG) cables on both left and right engines between the service pylon connections to the IDG, corrective action if necessary, and installation of protective Teflon tubing and additional clamps on the IDG cable harnesses. This action is necessary to prevent electrical arcing between the IDG cable and the engine cowling, which could result in in-flight fire and/or loss of electrical power. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9a.m. and 3p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–211–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B16 (CL–601–3R and CL–604) series airplanes. TCCA advises that it has received a report of electrical arcing between the integrated drive generator (IDG) cable and an engine cowl door on a Model CL–600–2B19 series airplane. The electrical arcing has been attributed to chafing of the IDG cable. The IDG cable installation in Model CL–600–2B16 series airplanes is similar to that in Model CL–600–2B19 series airplanes. Electrical arcing between the IDG cable and the engine cowling, if not corrected, could result in in-flight fire and/or loss of electrical power.

Related AD

The FAA issued AD 2001–06–07, amendment 39–12154 (66 FR 16114, March 23, 2001), as an immediately adopted rule, applicable to Bombardier Model CL–600–2B19 series airplanes. The unsafe condition, required actions, and inspection compliance times in AD 2001–06–07 are the same as those identified in this AD.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletins

A601–0542 (for Model CL–601) and A604–73–002 (for Model CL–604), both dated January 12, 2001. These alert service bulletins describe procedures for a one-time inspection of the IDG cables on both left and right engines to detect chafing and other damage; repair or replacement of any damaged IDG cable if its inner core is not visible and not damaged; replacement of any damaged IDG cable with a new cable if the inner core is visible or damaged; and installation of protective Teflon tubing and additional clamps on the IDG cable harness. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition. TCCA classified these alert service bulletins as mandatory and issued Canadian airworthiness directive CF–2001–06, dated January 26, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane 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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent electrical arcing between the IDG cable and the engine cowling, which could result in in-flight fire and/or loss of electrical power. This AD requires a one-time inspection to detect chafing and other damage of the integrated drive generator (IDG) cables on both left and right engines between the service pylon connections to the IDG, corrective action if necessary, and installation of protective Teflon tubing and additional clamps on the IDG cable harnesses. The AD also requires that operators report results of positive inspection findings to Bombardier.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–211–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–08 Bombardier, Inc. (Formerly Canadair): Amendment 39–12716. Docket 2001–NM–211–AD.

Applicability: Model CL–600–2B16 (CL–601–3R) series airplanes, serial numbers 5135 through 5194 inclusive; and Model CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5481 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the integrated drive generator (IDG) cable and the engine cowling, which could result in in-flight fire and/or loss of electrical power, accomplish the following:

Inspection

(a) Within 50 flight hours after the effective date of this AD, perform a detailed inspection of the IDG cables on both left and right engines to detect chafing and other damage between the service pylons to the IDG, in accordance with Bombardier Alert Service Bulletin A601–0542 (for Model CL–600–2B16 (CL–601) series airplanes) or A604–73–002 (for Model CL–600–2B16 (CL–604) series airplanes), both dated January 12, 2001; as applicable. If any chafing or other damage is found: Prior to further flight, repair the damaged cable or replace it with a new cable, as applicable, in accordance with the applicable alert service bulletin.

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

Installation of Teflon Tubing and Clamps

(b) Within 400 flight hours after the effective date of this AD, install protective Teflon tubing and additional clamps on the IDG cable harnesses, in accordance with Bombardier Alert Service Bulletin A601–0542 (for Model CL–601) or A604–73–002 (for Model CL–604), both dated January 12, 2001; as applicable.

Reporting

(c) If any chafing or other damage is found during the inspection required by paragraph (a) of this AD: Submit a report of the findings to Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as required by paragraph (c) of this AD: The actions must be done in accordance with Bombardier Alert Service Bulletin A601–0542, dated January 12, 2001; or Bombardier Alert Service Bulletin A604–73–002, dated January 12, 2001; as applicable. (The manufacturer's name is listed only on the first page on both of these documents; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–06, dated January 26, 2001.

Effective Date

(g) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9572 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–58–AD; Amendment 39–12726; AD 2001–25–52]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, and TH–55A 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) 2001–25–52, which was sent previously to all known U.S. owners and operators of Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters by individual letters. This AD supersedes an existing AD that requires inspecting and modifying or replacing, if necessary, the aluminum end fittings of each tailboom support strut (strut). That AD also requires inspecting the tailboom center attach fittings and center frame aft cluster fittings for damage, and if damaged parts are found, replacing the damaged parts. This AD requires inspecting and replacing, if necessary, each strut clevis lug (lug) on each tailboom center frame aft cluster fitting (cluster fitting), certain strut assemblies, certain tailboom attachments, and certain frame aft cluster fittings. Modifying or replacing each strut assembly within a certain time period and serializing certain strut assemblies are also required. This AD is prompted by an accident in the United Kingdom involving the in-flight structural failure of a Schweizer Model 269C helicopter. The actions specified by this AD are intended to prevent failure of a lug on a cluster fitting, rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

DATES: Effective May 8, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–52, issued on December 14, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–58–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256–7525, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The FAA issued AD 76–18–01 (41 FR 37093, September 2, 1976) on August 23, 1976, which amended AD No. 73–3–1 (38 FR 2331). AD 76–18–01 required visually inspecting the aluminum end fittings of each strut for deformation or damage and dye-penetrant inspecting for a crack and, if deformation, damage or a crack is found, modifying or replacing the part. Modifying or replacing the parts within specified hours time-in-service (TIS) is also required. Also, that AD requires inspecting the tailboom center attach fittings and center frame aft cluster fittings for damage, and if damaged parts are found, replacing the damaged parts.

Since the issuance of that AD, an accident occurred in the United Kingdom involving an in-flight structural failure of a Schweizer Model 269C helicopter. The Air Accidents Investigation Branch of the United Kingdom investigated the accident and recommended that the FAA issue an AD requiring certain inspections of the clevis lugs and replacing certain cluster fittings. The FAA determined that the unsafe condition was due to cracking of the cluster fitting. Therefore, on December 14, 2001, the FAA issued AD 2001–25–52 to supersede AD 76–18–01. AD 2001–25–52 retains the inspection, modification and replacement requirements of the strut, but adds a requirement to dye-penetrant inspect the lugs on both cluster fittings within 10 hours TIS and at specified intervals, and, before further flight, replace any cracked cluster fitting.

The FAA has reviewed Schweizer Service Information Notice No. N–109.2, dated, September 1, 1976, which describes procedures for inspecting tailboom support strut aluminum end fittings and replacing aluminum end fittings with stainless steel end fittings. The FAA has also reviewed Schweizer Service Information Notice No. N–108, dated May 21, 1973, which describes procedures for serializing the tailboom support strut assembly.

Since the unsafe condition described is likely to exist or develop on other Schweizer Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters of the same type designs, the FAA issued Emergency AD 2001–25–52 to prevent failure of a lug on a cluster fitting, rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter. The AD requires the following:

- Initially and at specified intervals, inspect the lugs on both cluster fittings, certain strut assemblies, certain tail boom attachments and center frame aft cluster fittings. If damage or a crack is found, before further flight replace each damaged or cracked part with an airworthy part;
- Modify or replace each strut assembly within the specified TIS or one year, whichever occurs first; and
- Serialize certain strut assemblies.

The actions must be accomplished in accordance with the service information notices described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions previously stated are required at the specified time intervals, 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 December 14, 2001 to all known U.S. owners and operators of Schweizer Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 500 helicopters of U.S. registry will be affected by this AD. It will take approximately 2.5 work hours for each dye-penetrant inspection, 12 work hours to replace one cluster fitting, 4 work hours to modify or replace the strut assembly, and 0.25 work hours to serialize the strut assembly. The average labor rate is $60 per work hour. Required parts will cost approximately $5.00 for each fitting inspection, $1635 to replace a cluster fitting, and $1500 to modify or replace the strut assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $283,280 (assuming 1000 cluster fittings are inspected, 50 cluster fittings are replaced, 6 strut assemblies are modified or replaced, and 6 strut assemblies are serialized).

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 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 mailed 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. 2001–SW–58–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–52 Schweizer Aircraft Corporation: Amendment 39–12726. Docket No. 2001–SW–58–AD. Supersedes AD 76–18–01, Amendment No. 39–2707, Docket No. 72–WE–23–AD.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, with tailboom support strut (strut) assemblies, part number (P/N) 269A2015 or P/N 269A2015–5; tailboom center attach fitting, P/N 269A2324; or with a center frame aft cluster fitting, P/N 269A2234 or 269A2235, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a strut clevis lug (lug) on a center frame aft cluster fitting (cluster fitting), rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS, for helicopters with cluster fittings, P/N 269A2234 or 269A2235:

(1) Using paint remover, remove paint from the lugs on each aft cluster fitting. Wash with water and dry.

(2) Dye-penetrant inspect the lugs on each aft cluster fitting. See Figure 1.

(3) If a crack is found, before further flight, replace the cracked cluster fitting with an airworthy cluster fitting. Cluster fittings, P/N 269A2234 and 269A2235, are not eligible to replace a cracked cluster fitting.

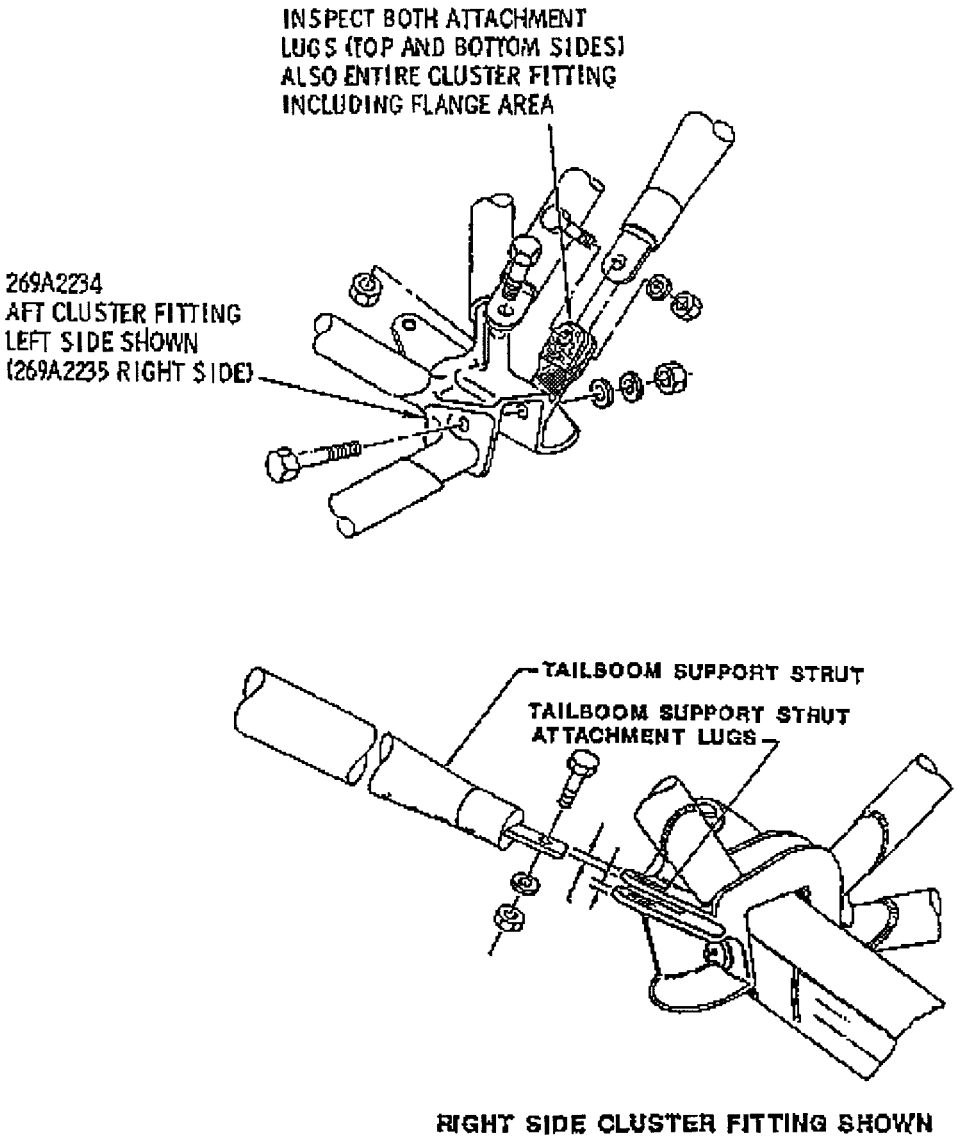

Figure 1

(b) For helicopters with strut assemblies P/N 269A2015 or 269A2015–5, accomplish the following:

(1) At intervals not to exceed 50 hours TIS:

(i) Remove the strut assemblies, P/N 269A2015 or P/N 269A2015–5.

(ii) Visually inspect the strut aluminum end fittings for deformation or damage and dye-penetrant inspect the strut aluminum end fittings for a crack in with accordance Step II of Schweizer Service Information Notice No. N–109.2, dated September 1, 1976 (SIN N–109.2).

(iii) If deformation, damage, or a crack is found, before further flight, modify the strut assemblies by replacing the aluminum end fittings with stainless steel end fittings, P/N 269A2017–3 and –5, and attach bolts in accordance with Step III of SIN N–109.2; or replace each strut assembly P/N 269A2015 with P/N 269A2015–9, and replace each strut assembly P/N 269A2015–5 with P/N 269A2015–11.

(2) Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies in accordance with paragraph (b)(1)(iii) of this AD.

(c) For Schweizer Aircraft Corporation Model 269C helicopters, within 100 hours TIS, serialize each strut assembly, P/N 269A2015–5 and 269A2015–11, in accordance with Schweizer Service Information Notice No. N–108, dated May 21, 1973.

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

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

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where

the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with Steps II and III of Schweizer Service Information Notice No. N–109.2, dated September 1, 1976 and Schweizer Service Information Notice No. N–108, dated May 21, 1973, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 8, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–52, issued December 14, 2001, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on April 12, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–9729 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–350–AD; Amendment 39–12720; AD 2002–08–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This action requires an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. This action provides for optional terminating action for the requirements of this AD. This action is necessary to prevent leakage of the PBOV and consequent failure of the ''blue'' hydraulic system, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2001–NM–350–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on January 2, 2002 (67 FR 31). That action proposed to require a one-time inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary.

As stated in the proposed AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advised the FAA that PBOV leakage has been identified on certain Airbus Model A320 series airplanes. The same PBOV is installed on Airbus Model A330 and A340 series airplanes. Hydraulic fluid leakage was found at the hydraulic connections and the vent hole of the valve. PBOV leakage, if not corrected, could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems. In addition, loss of the ''blue'' hydraulic system could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32A3139 and A340–32A4176, both Revision 01, dated November 23, 2001. The service bulletins describe procedures for a one-time detailed visual inspection of the PBOV of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. The service bulletins also describe procedures for modification or replacement of affected PBOVs, to be done if certain conditions are found during the inspection. Accomplishment of the actions described in the revised service bulletins is intended to adequately address the identified unsafe condition. The DGAC has mandated all of the actions (including the PBOV modification/replacement) described in these service bulletins, and issued French airworthiness directives 2001–516(B) R1 and 2001–517(B) R1, both dated February 6, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination of Urgency of Unsafe Condition

Since the proposed AD was issued, we have issued or will issue two similar ADs as immediately adopted rules—one applicable to Airbus Model A319, A320, and A321 series airplanes, and the other applicable to Airbus Model A300, A300–600, and A310 series airplanes. Because of the urgency of the unsafe condition identified in those ADs, and the similarity to the unsafe condition identified by this AD for Model A330 and A340 series airplanes, we have determined that immediate adoption of this AD is also necessary.

Explanation of Change to this AD

The DGAC has mandated that affected PBOVs be modified or replaced—regardless of the inspection findings. The service bulletins recommend this action only if certain conditions are found, and allow the repetitive inspections to continue under certain circumstances. We find that failure to

modify or replace the PBOVs in a timely manner may not provide the degree of safety necessary for the affected airplanes. However, the planned compliance time to accomplish the modification/replacement is long enough to provide notice and opportunity for prior public comment. Paragraph (b) of this AD provides for that action as optional. We may issue further rulemaking later to require the modification/replacement action.

Comments on the Proposed AD

Interested persons were given an opportunity to comment on the proposed AD. Due consideration has been given to the comments received.

Request to Extend Compliance Times

One commenter, an operator, requests that the proposed AD be revised to extend the compliance time from 7 days to 30 days, and the repetitive inspection interval from 10 days to 30 days. The operator's current operating schedule for the fleet permits little ground time outside of scheduled A- or C-checks, and requests the revised schedule to minimize the disruption to the flight operations. The commenter states that the proposed compliance times would make it difficult to accomplish the actions without resulting in flight delays and possible cancellations.

We do not concur. The commenter provides no specific basis for the anticipated difficulty in completing the actions within the proposed compliance times. For example, the commenter does not describe any potential problems with parts availability or the status of airplanes already inspected. The ability to accomplish the initial requirements during an overnight maintenance visit and the multiple options for follow-on actions should accommodate operators' scheduling needs. The compliance time remains the same as proposed.

Request to Cite Most Recent Service Bulletin

One commenter (an operator of Model A330 series airplanes) requests that the proposed AD be revised to cite Airbus Service Bulletin A330–32A3139, Revision 01, as the guidance for the AD requirements. (The original service bulletin was cited in the proposed AD.)

We concur with the commenter's request. In addition, as stated previously, Airbus has issued Revision 01 of Airbus Service Bulletin A340–32A4176 (for Model A340 series airplanes). This AD cites Revision 01 of these service bulletins as the appropriate source of service information; however, operators will receive credit for prior accomplishment of the actions according to the original service bulletin, as provided by Note 2 of this AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent leakage of the PBOV and consequent failure of the ''blue'' hydraulic system, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron. This AD requires an inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. This AD provides for the optional modification of affected PBOVs, or their replacement with new parts, which would terminate the requirements of this AD. The actions are required to be accomplished in accordance with the revised service bulletins described previously.

Interim Action

This is considered to be interim action. We are considering requiring the modification or replacement of affected PBOVs, which would terminate the requirements of this AD. However, the planned compliance time for the modification/replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing us 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 2001–NM–350–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–12 Airbus Industrie: Amendment 39–12720. Docket 2001–NM–350–AD.

Applicability: Model A330 and A340 series airplanes as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both Revision 01, dated November 23, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the parking brake operated valve (PBOV) of the main landing gear and consequent failure of the ''blue'' hydraulic system, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron, accomplish the following:

Inspections/Follow-On Actions

(a) Within 7 days after the effective date of this AD: Do a one-time detailed inspection to determine the part number (P/N) and serial number (S/N) of the PBOV of the main landing gear, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001; as applicable.

(1) If no P/N or S/N is identified as affected equipment according to the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment according to the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the PBOV, repair or replacement of the PBOV with a new or serviceable part if leakage is found, and an operational test) according to the applicable service bulletin. If the affected PBOV is not replaced, or if the PBOV is replaced with a part having the same P/N or S/N, repeat the inspection thereafter at the time specified by and according to the service bulletin, as applicable, until the part is replaced.

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

Optional PBOV Modification/Replacement

(b) Modification of affected PBOVs, or their replacement with new PBOVs, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001, as applicable, terminates the requirements of this AD.

Note 3: Accomplishment of the actions before the effective date of this AD according to Airbus Service Bulletin A330–32A3139 or A340–32A4176, dated September 14, 2001, as applicable, is acceptable for compliance with the requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions must be done in accordance with Airbus Service Bulletin A330–32A3139, Revision 01, including Appendix 01, dated November 23, 2001; or Airbus Service Bulletin A340–32A4176, Revision 01, including Appendix 01, dated November 23, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 2001–516(B) R1 and 2001–517(B) R1, both dated February 6, 2002.

Effective Date

(f) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9567 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–371–AD; Amendment 39–12721; AD 2002–08–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to all Airbus Model A319, A320, and A321 series airplanes. This action requires identification of the part number and serial number of the parking brake operated valve (PBOV); and, if necessary, inspection of the PBOV, including a functional check of the PBOV, and follow-on and corrective actions. This action also provides for optional terminating action for the requirements of this AD. This action is necessary to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001-NM–371-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–371–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Model A319, A320, and A321 series airplanes. The DGAC advises that leakage has been found on certain parking brake operated valves (PBOVs) on Airbus Model A320 series airplanes. Those PBOVs have been installed on airplanes in production, and as spares on airplanes in service. The leakage may be found at one or more of three hydraulic connections or at the vent hole. The leakage has been attributed to excessive roughness of the piston rod surface leading to wear of the internal seal. This condition, if not corrected, could result in loss of the yellow hydraulic system including the parking brake accumulator, loss of the parking/emergency braking system, and runway overrun when alternate/emergency braking is needed. The yellow circuit also provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron.

Related Rulemaking

The FAA has issued or intends to issue similar rulemaking for Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; and A330 and A340 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32A1233, dated August 16, 2001, which describes procedures for identifying the part number and serial number of the PBOV. For a PBOV having a certain part and serial number, the service bulletin describes procedures for an inspection to detect leakage or spray from the vent hole and to detect leakage or seepage of any of the three hydraulic connections. The inspection includes a test (functional check) of the PBOV. The service bulletin recommends repetitive tests if the PBOV passes the test; and repair or replacement if the PBOV fails, with repetitive tests if necessary. For certain conditions when a replacement spare is unavailable, the service bulletin recommends contacting the manufacturer for further action. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–384(B), dated September 5, 2001, to address this unsafe condition on airplanes operating in France.

The service bulletin refers to Messier-Bugatti Service Bulletin A25315–32–3215 as an additional source of service information for the PBOV repair.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between AD and Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires those corrective actions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of action required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, corrective action approved by either the FAA or the DGAC is acceptable for compliance.

Interim Action

This is considered to be interim action. The FAA and the DGAC are currently considering requiring replacement of all affected PBOVs. However, this AD does not require that action, but provides it as optional to terminate the repetitive actions required

by this AD. The planned compliance time for the PBOV replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–371–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–13 Airbus Industrie: Amendment 39–12721. Docket 2001–NM–371–AD.

Applicability: All Model A319, A320, and A321 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required as indicated, unless accomplished previously.

To prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron, accomplish the following:

Inspection and Functional Check

(a) Within 7 days after the effective date of this AD, identify the part number and serial number of the parking brake operated valve (PBOV) to determine whether the PBOV is an affected part, as identified by Airbus Service Bulletin A320–32A1233, dated August 16, 2001.

(1) If the PBOV is NOT an affected part, no further action is required by this AD.

(2) If the PBOV is an affected part: Except as required by paragraph (b) of this AD, prior to further flight, test the PBOV in accordance with the service bulletin; and thereafter perform follow-on and corrective actions (including repetitive tests and repair of the PBOV or replacement with a serviceable PBOV) at the time specified by and in accordance with the service bulletin, as applicable.

(b) If Airbus Service Bulletin A320–32A1233, dated August 16, 2001, specifies to contact the manufacturer for corrective action: Prior to further flight, perform the corrective action in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Optional Terminating Action

(c) Replacement of the PBOV with a new, nonaffected PBOV terminates the requirements of this AD. Affected PBOVs are identified in Airbus Service Bulletin A320–32A1233, dated August 16, 2001.

Spares

(d) As of the effective date of this AD, no person may install an affected PBOV on any airplane, unless that PBOV is in compliance with all applicable requirements of this AD. Affected PBOVs are identified by Airbus Service Bulletin A320–32A1233, dated August 16, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) Except as required by paragraph (b) of this AD: The actions must be done in accordance with Airbus Service Bulletin A320–32A1233, including Appendix 01, dated August 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–384(B), dated September 5, 2001.

Effective Date

(h) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9568 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–393–AD; Amendment 39–12722; AD 2002–08–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. This action requires identification of the part number and serial number of the parking brake operated valve (PBOV); and, if necessary, inspection of the PBOV, including a functional check of the PBOV, and follow-on and corrective actions. This action also provides for optional terminating action for the requirements of this AD. This action is necessary to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001-NM–393-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–393–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. The DGAC advises that leakage has been found on certain parking brake operated valves (PBOVs) on Airbus Model A320 series airplanes. It is possible that the same type of PBOV may be installed on some Model A300 B2 and B4, A300–600, and A310 series airplanes. Those PBOVs have been installed on airplanes in production, and as spares on airplanes in service. The leakage may be found at one or more of three hydraulic connections or at the vent hole. The leakage has been attributed to excessive roughness of the piston rod surface leading to wear of the internal seal. This condition, if not corrected, could result in loss of the yellow hydraulic system including the parking brake accumulator, loss of the parking/emergency braking system, and runway overrun when alternate/emergency braking is needed. The yellow circuit also provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron.

Related Rulemaking

The FAA has issued or intends to issue similar rulemaking for Airbus Model A319, A320, A321, A330, and A340 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), and A310–32A2124 (for Model A310 series airplanes); all dated September 10, 2001. The service bulletins describe procedures for identifying the part number and serial number of the PBOV. For a PBOV having a certain part and serial number, the service bulletins describe procedures for an inspection to detect leakage or spray from the vent hole and to detect leakage or seepage of the three hydraulic connections. The inspection includes a test (functional check) of the PBOV. The service bulletins recommend repetitive tests if the PBOV passes the test; and repair or replacement if the PBOV fails, with repetitive tests if necessary. For certain

conditions when a replacement spare is unavailable, the service bulletins recommend contacting the manufacturer for further action. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–510(B), dated October 17, 2001, to address this unsafe condition on airplanes operating in France.

The service bulletins refer to Messier-Bugatti Service Bulletin A25315–32–822 as an additional source of service information for the PBOV repair.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between AD and Relevant Service Information

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires those corrective actions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of action required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, corrective action approved by either the FAA or the DGAC is acceptable for compliance.

Interim Action

This is considered to be interim action. The FAA and the DGAC are currently considering requiring replacement of all affected PBOVs. However, this AD does not require that action, but provides it as optional to terminate the repetitive actions required by this AD. The planned compliance time for the PBOV replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both 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 2001–NM–393–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–14 Airbus Industrie: Amendment 39–12722. Docket 2001–NM–393–AD.

Applicability: All model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required as indicated, unless accomplished previously.

To prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron, accomplish the following:

Inspection and Functional Check

(a) Within 7 days after the effective date of this AD, identify the part and serial number of the parking brake operated valve (PBOV) to determine whether the PBOV is an affected part, as identified by Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable.

(1) If the PBOV is NOT an affected part, no further action is required by this AD;

(2) If the PBOV is an affected part: Except as required by paragraph (b) of this AD, prior to further flight, test the PBOV in accordance with the applicable service bulletin; and thereafter perform follow-on and corrective actions (including repetitive tests and repair of the PBOV or replacement with a serviceable PBOV) at the time specified by and in accordance with the service bulletin, as applicable.

(b) If the applicable service bulletin identified in paragraph (a) of this AD specifies to contact ''SEE32'' for corrective action: Prior to further flight, perform the corrective action in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l' Aviation Civile (DGAC) (or its delegated agent.)

Optional Terminating Action

(c) Replacement of the PBOV with a new, nonaffected PBOV terminates the requirements of this AD. Affected PBOVs are identified in Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable.

Spare

(d) As of the effective date of this AD, no person may install an affected PBOV on any airplane, unless that PBOV is in compliance with all applicable requirements of this AD. Affected PBOVs are identified by Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) Except as required by paragraph (b) of this AD: The actions must be done in accordance with Airbus Service Bulletin A300–32A0441, including Appendix 01, dated September 10, 2001; Airbus Service Bulletin A300–32A6087, including Appendix 01, dated September 10, 2001; and Airbus Service Bulletin A310–21A2124, including Appendix 01, September 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in French airworthiness directive 2001–510(B), dated October 17, 2001.

Effective Date

(h) This amendment becomes effective on May 8, 2002.

Issued in Renton, Washington, on April 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9569 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–02–AD; Amendment 39–12712; AD 2002–08–04]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain PIAGGIO AERO INDUSTRIES S.p.A. (PIAGGIO) Model P–180 airplanes. This AD requires you to replace the four defective horizontal stabilizer hinge bushings with replacement bushings. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to replace defective bushings before they cause failure of the horizontal stabilizer. Such failure could lead to reduced or loss of control of the aircraft.

DATES: This AD becomes effective on June 10, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 10, 2002.

ADDRESSES: You may get the service information referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City,

Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain PIAGGIO Model P–180 airplanes. The ENAC reports that PIAGGIO has discovered four incidents of defective horizontal stabilizer hinge bushings being installed on 4 PIAGGIO Model P–180 airplanes. The defect is a missing thermal process during bushing manufacturing.

What Is the Potential Impact if FAA Took No Action?

Continued operation with defective bushings could result in failure of the horizontal stabilizer. Such failure could lead to reduced or loss of control of the aircraft.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain PIAGGIO Model P–180 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 11, 2002 (67 FR 6205). The NPRM proposed to require you to replace the defective bushings, return the bushings to PIAGGIO, and report the return to FAA.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
50 workhours×$60 per hour=$3,000	$400 per aircraft	$3,400	$3,400×2=$6,800

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–08–04 PIAGGIO AERO INDUSTRIES S.p.A.: Amendment 39–12712; Docket No. 2002–CE–02–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, serial numbers 1034, 1035, 1039, and 1045, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to replace defective bushings before they cause failure of the horizontal stabilizer. Such failure could lead to reduced or loss of control of the aircraft.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the horizontal stabilizer hinge bushings with replacement bushings (part number RDC. 19–09–167–1/300) (or FAA-approved equivalent part number).	Within the next 150 hours time-in-service (TIS) after June 10, 2002 (the effective date of this AD).	Follow the ACCOMPLISHMENT INSTRUCTIONS section of PIAGGIO AERO INDUSTRIES S.p.A Service Bulletin (Mandatory) No. SB–80–0140, dated October 15, 2001, and the applicable service manual.

Actions	Compliance	Procedures
(2) Send the removed bushings to PIAGGIO AERO INDUSTRIES S.p.A. so the bushings cannot be reused and report the return to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bushings or within 10 days after June 10, 2002 (the effective date of this AD), whichever occurs later.	Send the removed bushings to PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy, and report the return to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with PIAGGIO AERO INDUSTRIES S.p.A Service Bulletin (Mandatory) No. SB–80–0140, dated October 15, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Italian AD Number 2001–512, dated November 30, 2001.

(i) *When does this amendment become effective?* This amendment becomes effective on June 10, 2002.

Issued in Kansas City, Missouri, on April 10, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9389 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–338–AD; Amendment 39–12677; AD 2002–06–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (ADs), applicable to certain Airbus Model A319, A320, and A321 series airplanes. The first AD currently requires removing the existing forward pintle nut and cross bolt on the main landing gear (MLG), and installing a new nylon spacer and cross bolt and nut. The second AD currently requires repetitive inspections for discrepancies of the lock bolt for the pintle pin on the MLG, follow-on corrective actions if necessary, and retorquing of the forward pintle pin lock bolt for certain airplanes. That AD also provides an optional terminating action. This amendment cancels the requirements of the first AD, continues the requirements of the second AD, and requires the previously optional terminating action that the second AD provides. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the pintle fitting bearing, and consequent collapse of the MLG during landing.

DATES: Effective May 28, 2002.

The incorporation by reference of Airbus Service Bulletin A320–32–1213, Revision 02, dated February 9, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of May 28, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34059, May 26, 2000).

The incorporation by reference of Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 12, 1998 (63 FR 36834, July 8, 1998).

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–10–18, amendment 39–9625 (61 FR 24690, May 16, 1996), which is applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes; and AD 2000–10–16, amendment 39–11740 (65 FR 34059, May 26, 2000), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes;

was published in the **Federal Register** on November 23, 2001 (66 FR 58684). The action proposed to cancel the requirements of the first AD, and continue to require the second AD's repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), follow-on corrective actions if necessary, and retorquing of the forward pintle pin lock bolt for certain airplanes. The action also proposed to require the previously optional terminating action that was provided for in the second AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter. The commenter generally supports the intent of the proposed rule, and has no objection to the FAA's proposal to mandate the terminating action, though the commenter believes that the repetitive inspections for discrepancies of the lock bolt for the pintle pin on the MLG are sufficient to ensure safety.

Correct Cost Impact Estimate

The commenter points out that the proposed rule incorrectly estimates the cost impact of the terminating action. While the proposed rule estimates the parts cost as $540 per airplane, the actual cost is $540 per MLG leg, for a total parts cost of $1,080 per airplane. We concur with the commenter and have revised the Cost Impact section of this final rule accordingly.

Conclusion

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

Cost Impact

There are approximately 341 Model A319, A320, and A321 series airplanes of U.S. registry affected by this AD.

The actions that are currently required by AD 2000–10–16 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new action that is required by this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,080 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $429,660, or $1,260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–11740 (65 FR 34059, May 26, 2000), and 39–9625 (61 FR 24690, May 16, 1996), and by adding a new airworthiness directive (AD), amendment 39–12677, to read as follows:

2002–06–01 Airbus Industrie: Amendment 39–12677. Docket 2000-NM–338-AD. Supersedes AD 2000–10–16, Amendment 39–11740; and AD 96–10–18, Amendment 39–9625.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, except those on which Airbus Service Bulletin A320–32–1213, dated March 21, 2000 (reference Airbus Modification 28903 or 30044) has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the pintle fitting bearing, and consequent collapse of the main landing gear (MLG) during landing, accomplish the following:

Note 2: Paragraphs (a) and (b) of this AD repeat the actions that were previously mandated by AD 2000–10–16. The intent of including these paragraphs is to ensure that the currently required repetitive inspections continue to be accomplished until the terminating modifications are installed.

Restatement of Requirements of AD 2000–10–16

Inspection

(a) Perform a detailed inspection to detect discrepancies (rotation, damage, and absence) of the lock bolt for the pintle pin on the MLG, in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997; Airbus Service Bulletin A320–32–1187, dated June 17, 1998; or Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999; at the latest of the times specified in paragraphs

(a)(1), (a)(2), and (a)(3) of this AD. If any discrepancy is detected, prior to further flight, perform corrective actions, as applicable, in accordance with the AOT or service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 15 months, whichever occurs first, unless the terminating action of paragraph (c) of this AD is accomplished. After June 30, 2000 (the effective date of AD 2000–10–16, amendment 39–11740), only Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, shall be used for compliance with this paragraph.

(1) Within 30 months since the airplane's date of manufacture or prior to the accumulation of 2,000 total flight cycles, whichever occurs first.

(2) Within 15 months or 1,000 flight cycles after the last gear replacement or accomplishment of Airbus Service Bulletin A320–32–1119, Revision 1, dated June 13, 1994, whichever occurs first.

(3) Within 500 flight cycles after August 12, 1998 (the effective date of AD 98–14–11, amendment 39–10644).

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

One-Time Follow-on Actions

(b) For airplanes on which the actions described in paragraph 2.B.(2)(c) of Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, have not been accomplished: At the time of the initial inspection or the next repetitive inspection required by paragraph (a) of this AD, perform the applicable one-time follow-on actions (including retorquing the forward pintle pin lock bolt and applying sealant to the head of the lock bolt), in accordance with section 2.B.(2)(c) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999.

New Actions Required by This AD

Terminating Modification

(c) Within 5 years from the effective date of this AD, or at the next MLG overhaul, whichever occurs later, modify the forward pintle pin cross bolt on both the left and right MLG (including a detailed inspection to ensure that the bolts are in proper position and are not broken, and repair if necessary; and removal and installation of the lock bolts), in accordance with Airbus Service Bulletin A320–32–1213, Revision 02, dated February 9, 2001. This modification constitutes terminating action for the requirements of this AD.

Note 4: Accomplishment of the actions required in paragraph (c) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A320–32–1213, dated March 21, 2000, or Revision 01, dated November 15, 2000, is considered acceptable for compliance with paragraph (c) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–10–16, amendment 39–11740, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, Airbus Service Bulletin A320–32–1187, dated June 17, 1998, or Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999; and Airbus Service Bulletin A320–32–1213, Revision 02, dated February 9, 2001; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–32–1213, Revision 02, dated February 9, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference Airbus Service Bulletin A320–32–1187, dated June 17, 1998; and Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999; was approved previously by the Director of the Federal Register, as of June 30, 2000 (65 FR 34059, May 26, 2000).

(3) The incorporation by reference of Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, was approved previously by the Director of the Federal Register as of August 12, 1998 (63 FR 36834, July 8, 1998).

(4) Copies of any of these service documents may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 2000–428–153(B), Revision 1, dated November 29, 2000.

Effective Date

(g) This amendment becomes effective on May 28, 2002.

Issued in Renton, Washington, on April 11, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9573 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–209–AD; Amendment 39–12723; AD 2002–08–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires an inspection of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. For certain airplanes, this AD also requires inspection and replacement of the existing tripod struts with new, adjustable struts, if necessary. This action is necessary to prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 28, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on January 2, 2002 (67 FR 35). That action proposed to require an inspection of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. For certain airplanes, that action also proposed to require inspection and replacement of the existing tripod struts with new, adjustable struts, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 379 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 136 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspections of the tripod strut assembly and bushing holes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $8,160, or $60 per airplane.

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

Should an operator be required to accomplish the rework of the fitting assembly, it will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this rework, if accomplished, will be $240 per airplane.

Should an operator be required to accomplish the high frequency eddy current inspection, it will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection, if accomplished, will be $300 per airplane.

Should an operator be required to accomplish the replacement of the main strut support fitting, it will take approximately 14 work hours per airplane to accomplish the replacement (on both the left and right wings of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour. Required parts will cost approximately $12,380 per airplane. Based on these figures, the cost impact of the replacement, if accomplished, will be $13,220 per airplane.

Should an operator be required to accomplish the inspection for improperly cut and spliced struts, it will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection, if accomplished, will be $60 per airplane.

Should an operator be required to accomplish the replacement of a cut and spliced strut with a new, adjustable tripod strut, it will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this replacement, if accomplished, will be $240 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–08–15 Boeing: Amendment 39–12723. Docket 2001–NM–209–AD.

Applicability: Model 767 series airplanes, line numbers 160 through 541 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required as indicated, unless accomplished previously.

To prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) For all airplanes: Before the accumulation of 5,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Do a general visual inspection (check) of the tripod strut assembly of the inboard leading edge slat of

each wing for a preload condition, per Figure 2 of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no preload condition is found, before further flight, inspect the fitting assembly bushing holes for roundness, per Figure 5 of the Accomplishment Instructions of the service bulletin.

(i) If all the bushing holes are round, before further flight, do the inspection required by paragraph (c) of this AD.

(ii) If any bushing hole is not round, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

(2) If a preload condition is found, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

Follow-on Actions

(b) For airplanes subject to paragraph (a)(1)(ii) or (a)(2) of this AD: Do a high frequency eddy current inspection of the fitting assembly lug for cracking, per Figure 6 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If no cracking is found, or if cracking is found in the lug bore only, before further flight, rework the fitting assembly lug, per Figure 7 of the Accomplishment Instructions of the service bulletin.

(2) If cracking is found in the fitting lug base or the lug bore and base, before further flight, purge the auxiliary fuel tank and replace the fitting assembly lug, per Figure 8 of the Accomplishment Instructions of the service bulletin.

(c) For airplanes subject to paragraph (a)(1)(i), (a)(1)(ii), or (a)(2) of this AD: Do a general visual inspection of the bushing holes of the main strut assembly to determine if the bushing holes are round, per Figure 9 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If the bushing holes are round, before further flight, assemble the tripod assembly, per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If the bushing holes are not round, before further flight, replace the main strut fitting assembly, per Figure 10 of the Accomplishment Instructions of the service bulletin; then assemble the tripod assembly, per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

Note 3: Inspections and follow-on actions done before the effective date of this AD per Boeing Alert Service Bulletin 767–57A0058, dated June 11, 1998, are considered acceptable for compliance with the applicable actions specified in this AD.

Inspection/Replacement of Tripod Struts

(d) For Group 2 airplanes that have not accomplished Boeing Service Bulletin 767–57–0037, dated January 14, 1993: Before further flight after doing the inspections and follow-on actions required by paragraphs (a), (b), and (c) of this AD, do a general visual inspection of the tripod struts to determine if they have been cut and spliced, per the Accomplishment Instructions of the service bulletin.

(1) If the tripod struts have been cut and spliced with fewer than six hi-loks, before further flight, replace with new, adjustable struts, per Figure 1 of the Accomplishment Instructions of the service bulletin.

(2) If the tripod struts have not been cut and spliced, or they have been cut and spliced with six hi-loks, no further action is required by this paragraph.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999; and Boeing Service Bulletin 767–57–0037, dated January 14, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 28, 2002.

Issued in Renton, Washington, on April 15, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9613 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD; Amendment 39–12719; AD 2002–08–11]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to certain Pratt & Whitney JT9D series turbofan engines. That AD currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action adds additional critical life-limited parts for enhanced inspection. This amendment is prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date May 28, 2002.

ADDRESSES: The information referenced in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–01–13, Amendment 39–11511 (65 FR 2864, January 19, 2000), which is applicable to Pratt & Whitney (PW) JT9D series turbofan engines, was published in the **Federal Register** on November 20, 2001, (66 FR 58075). That action proposed to require revisions to the Airworthiness Limitations Section (ALS) of the

manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Comments

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

Add the –20 Model

One commenter requests that the JT9D–20 engine model be added to the applicability paragraph.

The FAA agrees. Although the JT9D–20 engine model was included in the Mandatory Inspections Table of the proposed rule, it was inadvertently omitted from the applicability paragraph of the proposed rule, and is now included in this final rule.

Modify Part Nomenclature

One commenter requests that in the Mandatory Inspections Table, under the Part Nomenclature column, the words ''and Hubs'' be added to all four references to ''All LPT Stage 3–6 Disks'' to be consistent with manufacturer nomenclature.

The FAA agrees. The four references in the Mandatory Inspections Table now read ''All LPT Stage 3–6 Disks and Hubs'' in this final rule.

Difference Between Existing AD and Proposal Paragraph (a)

One commenter states that paragraph (a) of AD 2000–01–13 differs from the proposal paragraph (a). The AD paragraph (a) directs the revision to the Engine Time Limit Section (TLS) of the manufacturer's Engine Manuals by specifically listed Engine Manual part numbers, while the proposal states the necessity to revise the manufacturer's Airworthiness Limitation Section (ALS) of the Instructions for Continued Airworthiness (ICA). The commenter requests clarification.

The FAA agrees with adding clarification. The wording in paragraph (a) of AD 2000–01–13 was changed in the proposal to be consistent with other engine models, however, the JT9D engine manuals are not consistent with the manuals of the other PW engine models. Also, the proposal included the engine manual part numbers in the table. Therefore, the FAA changes the wording of paragraph (a) in this final rule to read: ''Within the next 30 days after the effective date of this AD, revise the Engine-Time Limits-Airworthiness Limitations Section of the manufacturer's Engine Manual (EM) (JT9D manual part numbers provided in the Table of this AD) and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:''

Expand Cycles-In-Service Inspection Waiver

One commenter states that there are circumstances where the part inspection would not normally be done. An example of this would be during the rotor balancing process; the inspection would be called out where the rotors may require removal and reinstallation of all blades at rearranged locations to meet balance requirements. The commenter proposes that paragraph (2)(ii) of the proposed change to the Engine Time Limits Section be reworded to allow 2,500 cycles-in-service since the last piece-part opportunity inspection for parts not damaged or related to the removal cause. This would ensure at least one mid-life inspection opportunity for the disk and hub, and would prevent unnecessary inspections due to rotor balance and other work requirements.

The FAA disagrees. The commenter suggests that the 100 cycles-in-service inspection waiver provided in the piece-part opportunity definition is too low and should be expanded to 2,500 cycles. The 100 cycle waiver is intended to allow short-term relief from mandatory inspections for a part recently inspected in accordance with the engine manual requirements. The 100 cycle waiver is specifically aimed at disassembled parts removed from an engine following a test cell reject or some other event that caused the parts removal shortly after successful completion of mandatory inspections. Waiver of mandatory inspections in this instance also requires that the part was not damaged related to the cause for its removal from the engine. Mandatory inspections are required on fully disassembled parts regardless of time-since-new (TSN) or time-since-overhaul (TSO).

The FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Typical on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, which are the need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, the FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number. It is strictly based on keeping the frequency of mandatory inspections as high as practicable and therefore increases the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in paragraph (2)(ii) of the changes to the Engine Time Limits Section of the AD and no exemption will be allowed for infrequent circumstances that create a piece-part opportunity.

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

Economic Analysis

The FAA estimates that 837 engines installed on airplanes of US registry would be affected by this AD, that it would take approximately 1 work hour per engine to do the proposed actions. The average labor rate is $60 per work hour. Based on these figures the total cost of the proposed AD on U.S. operators is estimated to be $954,180.

Regulatory Analysis

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

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11511 (65 FR 2864, January 19, 2000) and by adding a new airworthiness directive, Amendment 39–12719, to read as follows:

2002–08–11 Pratt & Whitney: Amendment 39–12719. Docket No. 98–ANE–47–AD. Supersedes AD 2000–01–13, Amendment 39–11511.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Engine-Time Limits-Airworthiness Limitations Section of the manufacturer's Engine Manual (EM) (JT9D manual part numbers provided in the Table of this AD) and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

Mandatory Inspections

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine model	Engine manual part number	Part nomenclature	FPI per manual section	Inspection
7/7A/7AH/7F, 7H/7J/20/20J.	*646028 (or the equivalent customized versions 770407 and 770408).	All Fan Hubs	72–31–04	02
.		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs	72–51–00	03
		All LPT Stage 3–6 Disks and Hubs	72–52–00	03
59A/70A	754459	All Fan Hubs	72–31–00	Heavy Maintenance Check.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Heavy Maintenance Check.
		All HPT Stage 1–2 Disks and Hubs	72–51–00	Heavy Maintenance Check–3.
		All LPT Stage 3–6 Disks and Hubs	72–52–00	Heavy Maintenance Check–3.
7Q/7Q3	777210	All Fan Hubs	72–31–00	03
		All HPC Stage 5–15 disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs	72–51–00	03
		All LPT Stage 3–6 Disks and Hubs	72–52–00	03
7R4	785058, 785059, and 789328.	All Fan Hubs	72–31–00	03
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs	72–51–00	03
		All LPT Stage 3–6 Disks and Hubs	72–52–00	03

*P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the Engine-Time Limits-Airworthiness Limitations Section of the JT9D Engine Manual.

Alternative Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

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

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

Special Flight Permits

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

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Effective Date

(f) This amendment becomes effective on May 28, 2002.

Issued in Burlington, Massachusetts, on April 12, 2002.

Thomas A. Boudreau,

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

[FR Doc. 02–9844 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10743; Airspace Docket No. 01–ASW–16]

Realignment of Federal Airway V–385; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action realigns Federal Airway 385 (V–385) between Lubbock, TX, and Abilene, TX, so that aircraft will be able to navigate on the airway without encroaching upon the newly designated Lancer Military Operations Area (MOA).

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2001, the FAA proposed to amend 14 CFR part 71 to realign V–385 by moving a turning point (BOOMR intersection) approximately seven miles to the east of its present location (66 FR 63517). With this realignment, aircraft can navigate between Lubbock, TX, and Abilene, TX, without encroaching upon the Lancer MOA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal.

The Rule

This amendment to 14 CFR part 71 realigns V–385 between Lubbock, TX, and Abilene, TX, by relocating the BOOMR intersection and moving the airway approximately seven miles to the east of its present location. This realignment allows aircraft to navigate on V–385 between Lubbock, TX, and Abilene, TX, without encroaching upon the Lancer MOA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–385 [Revised]

From Lubbock, TX, INT Lubbock 105° and Abilene, TX, 329° radials; Abilene.

* * * * *

Issued in Washington, DC, on April 17, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–9941 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30304; Amdt. No. 3001]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airpots, Navigation (air).

Issued in Washington, DC on April 12, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

1. Part 97 is amended to read as follows:

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 13, 2002*

Clinton, AR, Holley Mountain Airpark, RNAV (GPS) RWY 5, Orig
Clinton, AR, Holley Mountain Airpark, RNAV (GPS) RWY 23, Orig
Hope, AR, Hope Muni, VOR/DME RWY 4, Amdt 8
Hope, AR, Hope Muni, RNAV (GPS) RWY 4, Orig
Hope, AR, Hope Muni, RNAV (GPS) RWY 16, Orig
Hope, AR, Hope Muni, GPS RWY 4, Orig, CANCELLED
Hope, AR, Hope Muni, GPS RWY 16, Orig, CANCELLED
Fresno, CA, Fresno Yosemite International, VOR/DME OR TACAN RWY 11L, Orig
Fresno, CA, Fresno Yosemite International, VOR OR TACAN RWY 11L, Amdt 11A, CANCELLED
Los Angeles, CA, Whiteman, VOR–A, Amdt 1A
Los Angeles, CA, Whiteman, RNAV (GPS)–C, Orig
Los Angeles, CA, Whiteman, GPS–B, Orig, CANCELLED
Palm Springs, CA, Bermuda Dunes, VOR–A, Orig
Palm Springs, CA, Bermuda Dunes, VOR OR GPS RWY 28, Orig, CANCELLED
Palm Springs, CA, Bermuda Dunes, RNAV (GPS) RWY 28, Orig
West Palm Beach, FL, Palm Beach Intl, VOR OR GPS RWY 9L, Amdt 2
West Palm Beach, FL, Palm Beach Intl, VOR OR GPS RWY 13, Amdt 3
West Palm Beach, FL, Palm Beach Intl, VOR OR GPS RWY 27R, Amdt 2
West Palm Beach, FL, Palm Beach Intl, VOR OR GPS RWY 31, Amdt 4
West Palm Beach, FL, Palm Beach Intl, NDB RWY 9L, Amdt 20
West Palm Beach, FL, Palm Beach Intl, ILS RWY 9L, Amdt 23
West Palm Beach, FL, Palm Beach Intl, ILS RWY 27R, Amdt 1
Albia, IA, Albia Muni, RNAV (GPS) RWY 31, Orig
Albia, IA, Albia Muni, VOR/DME–A, Amdt 4
Fort Leavenworth, KS, Sherman AAF, RNAV (GPS) RWY 15, Orig
Fort Leavenworth, KS, Sherman AAF, RNAV (GPS) RWY 33, Orig
Fort Leavenworth, KS, Sherman AAF, NDB RWY 33, Amdt 4
Fort Leavenworth, KS, Sherman AAF, GPS RWY 15, Orig
Fort Leavenworth, KS, Sherman AAF, GPS RWY 33, Orig
Presque Isle, ME, Northern Maine Regional Arpt At Presque Isle, VOR RWY 19, Amdt 10
Presque Isle, ME, Northern Maine Regional Arpt At Presque Isle, RNAV (GPS) Y RWY 1, Orig
Presque Isle, ME, Northern Maine Regional Arpt At Presque Isle, RNAV (GPS) Z RWY 1, Orig
Presque Isle, ME, Northern Maine Regional Arpt At Presque Isle, GPS RWY 1, Orig, CANCELLED
Greenville, MI, Greenville Muni, VOR/DME–A, Amdt 2
Greenville, MI, Greenville Muni, RNAV (GPS) RWY 10, Orig
Greenville, MI, Greenville Muni, RNAV (GPS) RWY 28, Orig
Greenville, MI, Greenville Muni, GPS RWY 28, Orig-A, CANCELLED
Dexter, MO, Dexter Muni, RNAV (GPS) RWY 18, Orig
Dexter, MO, Dexter Muni, RNAV (GPS) RWY 36, Orig
Dexter, MO, Dexter Muni, NDB RWY 36, Amdt 1
Dexter, MO, Dexter Muni, VOR/DME RWY 36, Amdt 5
Malden, MO, Malden Muni, RNAV (GPS) RWY 18, Orig
Malden, MO, Malden Muni, RNAV (GPS) RWY 36, Orig
Malden, MO, Malden Muni, RNAV (GPS) RWY 31, Orig
Malden, MO, Malden Muni, VOR/DME RWY 13, Orig
Malden, MO, Malden Muni, VOR RWY 31, Amdt 8
Malden, MO, Malden Muni, VOR/DME RNAV OR GPS RWY 13, Orig-A, CANCELLED
Monroe City, MO, Monroe City Regional, RNAV (GPS) RWY 9, Orig
Monroe City, MO, Monroe City Regional, RNAV (GPS) RWY 27, Orig
Monroe City, MO, Monroe City Regional, VOR/DME–A, Amdt 2
Monroe City, MO, Monroe City Regional, VOR/DME RNAV RWY 27, Amdt 1
Monroe City, MO, Monroe City Regional, GPS RWY 27, Orig
Malta, MT, Malta, RNAV (GPS) RWY 8, Orig
Malta, MT, Malta, RNAV (GPS) RWY 26, Orig
Scobey, MT, Scobey, RNAV (GPS) RWY 12, Orig
Rochester, MN, Rochester International, RNAV (GPS) RWY 2, Orig
Rochester, MN, Rochester International, VOR RWY 2, Amdt 17
St. Paul, MN, Lake Elmo Airport, NDB RWY 4, Amdt 4
St. Paul, MN, Lake Elmo Airport, RNAV (GPS) RWY 32, Orig
St. Paul, MN, Lake Elmo Airport, GPS RWY 32, Orig–A, CANCELLED
Walhalla, ND, Walhalla, RNAV (GPS) RWY 33, Orig
Grant, NE, Grant Muni, RNAV (GPS) RWY 15, Orig
Grant, NE, Grant Muni, RNAV (GPS) RWY 33, Orig
Grant, NE, Grant Muni, NDB RWY 15, Amdt 3
Grant, NE, Grant Muni, NDB RWY 33, Amdt 3
Grant, NE, Grant Muni, VOR/DME RWY 15, Orig
Akron, NY, Akron, VOR OR GPS RWY 7, Amdt 3, CANCELLED
Akron, NY, Akron, VOR/DME OR GPS RWY 25, Amdt 4, CANCELLED
Akron, NY, Akron, RNAV (GPS) RWY 7, Orig
Akron, NY, Akron, RNAV (GPS) RWY 25, Orig
South Bethlehem, NY, South Albany, RNAV (GPS) RWY 1, Orig
South Bethlehem, NY, South Albany, RNAV (GPS) RWY 19, Orig
Canandaigua, NY, Canandaigua, RNAV (GPS) RWY 13, Orig
Canandaigua, NY, Canandaigua, GPS RWY 13, Orig, CANCELLED
Penn Yan, NY, Penn Yan, RNAV (GPS) RWY 1, Orig
Penn Yan, NY, Penn Yan, RNAV (GPS) RWY 19, Orig
Penn Yan, NY, Penn Yan, GPS RWY 1, Orig, CANCELLED
Penn Yan, NY, Penn Yan, GPS RWY 19, Orig, CANCELLED
Chillicothe, OH, Ross County, RNAV (GPS) RWY 23, Orig
Chillicothe, OH, Ross County, GPS RWY 23, Orig, CANCELLED
Clearfield, PA, Clearfield-Lawrence, VOR RWY 30, Amdt 6
Clearfield, PA, Clearfield-Lawrence, RNAV (GPS) RWY 30, Orig
Clearfield, PA, Clearfield-Lawrence, GPS RWY 30, Orig, CANCELLED
Sterling, PA, Spring Hill, VOR–B, Orig
Barnwell, SC, Barnwell County, RNAV (GPS) RWY 16, Orig
Barnwell, SC, Barnwell County, NDB–A, Amdt 1
Barnwell, SC, Barnwell County, NDB RWY 4, Amdt 2
Clemson, SC, Oconee County Regional, GPS RWY 25, Orig, CANCELLED
Clemson, SC, Oconee County Regional, NDB OR GPS–A, Amdt 5B, CANCELLED
Clemson, SC, Oconee County Regional, RNAV (GPS) RWY 7, Orig
Clemson, SC, Oconee County Regional, RNAV (GPS) RWY 25, Orig
Clemson, SC, Oconee County Regional, NDB RWY 25, Orig
Clemson, SC, Oconee County Regional, GPS RWY 7, Orig–A, CANCELLED
Eagle Butte, SD, Cheyenne Eagle Butte, RNAV (GPS) RWY 31, Orig
Eagle Butte, SD, Cheyenne Eagle Butte, GPS RWY 31, Amdt 1, CANCELLED
Huron, SD, Huron Regional, LOC/DME BC RWY 30, Amdt 12
Huron, SD, Huron Regional, RNAV (GPS) RWY 30, Orig
Pierre, SD, Pierre Regional, VOR or TACAN RWY 25, Orig
Pierre, SD, Pierre Regional, VOR/DME or TACAN or GPS RWY 25, Amdt 16A CANCELLED
Pierre, SD, Pierre Regional, VOR/DME or TACAN RWY 7, Amdt 4C
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 7, Orig

Pierre, SD, Pierre Regional, RNAV (GPS) RWY 25, Orig
Dickson, TN, Dickson Muni, RNAV (GPS) RWY 17, Orig
Manassas, VA, Manassas Regional/Harry P. Davis Field, NDB OR GPS–A, Amdt 8C, CANCELLED
Norfolk, VA, Norfolk Intl, NDB/DME RWY 23, Orig
Norfolk, VA, Norfolk Intl, NDB/DME OR GPS RWY 23, Orig–B, CANCELLED
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 5, Orig
Friendship (Adams), WI, Adams County Legion Field, RNAV (GPS) RWY 33, Orig
Friendship (Adams), WI, Adams County Legion Field, GPS RWY 33, Orig–A CANCELLED
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, VOR RWY 21, Amdt 16
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, RNAV (GPS) Y RWY 3, Orig
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, RNAV (GPS) Z RWY 3, Orig
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, RNAV (GPS) Y RWY 21, Orig
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, RNAV (GPS) Z RWY 21, Orig

[FR Doc. 02–9849 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30305; Amdt. No. 3002]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace system, such as the commissioning of new navigational facilities, additional of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the effected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporated by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125)

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective date of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designed FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 12, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARDS INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SMF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.39 COPTER SIAPs, Identified as follows: .....EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC No.	Subject
03/05/02	NE	AINSWORTH	AINSWORTH MUNI	2/1923	VOR OR GPS RWY 17, AMDT 2A.
03/07/02	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	2/1982	LOC RWY 31, AMDT 6.
03/07/02	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	2/1983	ILS RWY 13, AMDT 26.
03/07/02	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	2/1984	ILS RWY 35, AMDT 11.
03/07/02	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	2/1985	GPS RWY 35, ORIG.
03/11/02	TX	DENTON	DENTON MUNI	2/2085	ILS RWY 17, AMDT 6A.
03/11/02	KS	OLATHE	JOHNSON COUNTY EXECUTIVE.	2/2088	VOR RWY 36, AMDT 11.
03/11/02	KS	OLATHE	JOHNSON COUNTY EXECUTIVE.	2/2111	NDB RWY 18, AMDT 4.
03/11/02	KS	OLATHE	JOHNSON COUNTY EXECUTIVE.	2/2112	LOC RWY 18, AMDT 7.
03/11/02	KS	OLATHE	JOHNSON COUNTY EXECUTIVE.	2/2113	RNAV (GPS) RWY 18, ORIG.
03/12/02	TX	BROWNSVILLE	SOUTH PADRE ISLAND INTL.	2/2146	VOR/DME RNAV OR GPS RWY 17, AMDT 3.
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2178	VOR/DME RWY 2, ORIG-B.
03/14/02	NE	FAIRMONT	FAIRMONT STATE AIRFIELD.	2/2224	GPS RWY 35, ORIG.
03/18/02	LA	LAFAYETTE	LAFAYETTE REGIONAL	2/2289	ILS RWY 22L, AMDT 4B.
03/18/02	LA	LAFAYETTE	LAFAYETTE REGIONAL	2/2290	NDB OR GPS RWY 22L, AMDT 4A.
03/21/02	IA	PELLA	PELLA MUNI	2/2347	NDB RWY 34, AMDT 7A.
03/27/02	FL	SARASOTA (BRADENTON).	SARASOTA/BRADENTON INTL.	2/2510	VOR OR GPS RWY 22, AMDT 10B.
03/27/02	FL	SARASOTA (BRADENTON).	SARASOTA/BRADENTON INTL.	2/2511	VOR OR GPS RWY 14, AMDT 16A.
03/27/02	FL	SARASOTA (BRADENTON).	SARASOTA/BRADENTON INTL.	2/2512	VOR OR GPS RWY 32, AMDT 8B.
03/27/02	FL	SARASOTA (BRADENTON).	SARASOTA/BRADENTON INTL.	2/2513	NDB RWY 32, AMDT 6B.
03/27/02	TN	CROSSVILLE	CROSSVILLE MEMORIAL-WHITSON FIELD.	2/2520	VOR/DME OR GPS-A, AMDT 8.
03/27/02	TN	CROSSVILLE	CROSSVILLE MEMORIAL-WHITSON FIELD.	2/2521	ILS RWY 26, AMDT 11C.
03/27/02	MN	DODGE CENTER	DODGE CENTER	2/2528	VOR OR GPS-A, AMDT 3.
03/27/02	MN	DODGE CENTER	DODGE CENTER	2/2529	GPS RWY 34, AMDT 2.
03/28/02	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	2/2550	VOR/DME RNAV RWY 5, AMDT 3B.
03/28/02	MO	OZARK	AIR PARK SOUTH	2/2567	VOR OR GPS RWY 17, AMDT 4.
04/01/02	NE	COLUMBUS	COLUMBUS MUNI	2/2654	GPS RWY 14, ORIG-A.
04/03/02	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	2/2699	GPS RWY 27, ORIG.
04/03/02	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	2/2700	VOR/DME RWY 27, AMDT 2.
04/03/02	GA	DONALSONVILLE	DONALSONVILLE MUNI	2/2713	VOR/DME OR GPS-A, AMDT 2A.

FDC Date	State	City	Airport	FDC No.	Subject
04/04/02	NY	ALBANY	ALBANY INTL	2/2737	COPTER ILS RWY 1, ORIG.
04/04/02	NY	ALBANY	ALBANY INTL	2/2738	ILS RWY 1, AMDT 9.
04/04/02	NC	ERWIN	HARNETT COUNTY	2/2740	VOR/DME RWY 5, AMDT 2.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2746	ILS RWY 4 (CAT I, II), AMDT 17.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2747	ILS RWY 22, AMDT 5.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2748	ILS RWY 28, AMDT 28.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2749	VOR/DME OR GPS RWY 4, AMDT 1A.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2750	VOR RWY 4, AMDT 9.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2751	NDB OR GPS RWY 28, AMDT 20B.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2752	RNAV (GPS) RWY 22, ORIG-A.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2753	GPS RWY 10, ORIG.
04/05/02	HI	LIHUE	LIHUE	2/2772	VOR/DME OR TACAN OR GPS RWY 21, AMDT 3A.
04/05/02	LA	LAKE CHARLES	LAKE CHARLES REGIONAL.	2/2786	VOR-A, AMDT 13.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2787	VOR/DME-A, AMDT 1.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2788	NDB RWY 15, AMDT 1B.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2789	LOC RWY 15, AMDT 1B.
04/08/02	FL	BROOKSVILLE	HERNANDO COUNTY	2/2825	ILS RWY 9, AMDT 2.
04/08/02	TX	MIDLAND	MIDLAND INTL	2/2839	VOR/DME RNAV RWY 16R, AMDT 3.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2910	NDB RWY 35R, AMDT 5B.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2917	ILS RWY 35 (CAT I, II), AMDT 8C.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2919	RNAV (GPS) RWY 35R, ORIG.
04/11/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD	2/2921	LOC BC RWY 35L, AMDT 10C.

[FR Doc. 02–9850 Filed 4–22–02; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–8091; 34–45769; File No. S7–11–02]

RIN 3235–AI40

Amendment to Definition of ''Equity Security''

AGENCY: Securities and Exchange Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Commodity Futures Modernization Act of 2000 amended the definition of ''security'' in the Securities Act of 1933 and the definitions of ''security'' and ''equity security'' in the Securities Exchange Act of 1934 to include a security future. We are amending the definitions of ''equity security'' in the rules under the Securities Act and the Exchange Act to conform them to the statutory definitions with respect to security futures.

DATES: *Effective Date:* These rules are effective June 7, 2002.

Comment Date: Comments on the amended rules must be received on or before May 23, 2002.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–11–02; please include this file number in the subject line if you use e-mail. We will make all comment letters available for public inspection and copying in our public reference room at the same address. We will post electronically submitted comment letters on the Commission's Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 942–2910, or in writing, at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 405[2] under the Securities Act of 1933[3] and Rule 3a11–1[4] under the Securities Exchange Act of 1934.[5]

I. Discussion

One of the purposes of the Commodity Futures Modernization Act

[1] We do not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. You should only submit information you wish to make publicly available.

[2] 17 CFR 230.405.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 240.3a11–1.

[5] 15 U.S.C. 78a *et seq.*

of 2000[6] is to provide a regulatory framework for the trading of futures contracts on equity securities.[7] The CFMA permits national securities exchanges registered under Section 6 of the Exchange Act[8] and national securities associations registered under Section 15A(a) of the Exchange Act[9] to list futures on individual securities and on narrow-based security indices (''security futures'').[10] Among other things, the CFMA:

- Amended the definition of ''security'' in Section 2(a)(1)[11] of the Securities Act and Section 3(a)(10)[12] of the Exchange Act to include security futures;
- Amended the definition of ''equity security'' in Section 3(a)(11)[13] of the Exchange Act to include security futures;
- Exempted certain security futures from the registration requirements of the Securities Act[14];
- Exempted security futures from the provisions of Section 12(a)[15] of the Exchange Act;
- Amended Section 12(g)[16] of the Exchange Act to clarify that security futures are not equity securities of the issuer of the underlying securities; and
- Amended Section 16 of the Exchange Act to cover ownership of, and transactions in, security futures.[17]

No futures contracts on single stocks or on narrow-based security indices are currently traded on national securities exchanges or associations.

We are amending the definitions of ''equity security'' in Securities Act Rule 405 and Exchange Act Rule 3a11–1 to include security futures, consistent with the statutory treatment of security futures.[18] We adopted Rule 3a11–1 in 1965 to clarify that the term ''equity security,'' as used in Sections 12(g) and 16 of the Exchange Act as well as Exchange Act Rule 12h–1,[19] includes a wider range of equity interests than are specifically listed in the Exchange Act definition.[20] In 1982, in connection with our adoption of the integrated disclosure system, we amended the definition of ''equity security'' in Rule 405 to conform it to the definition in Rule 3a11–1.[21] The Rule 405 revision was made on the ground that there was no basis for defining ''equity security'' differently for purposes of our Securities Act rules than for our Exchange Act rules.[22] We are amending the definitions of ''equity security'' in Rules 405 and 3a11–1 in the same fashion. Both rules would therefore remain identical.

Because certain security futures are statutorily exempt from registration under the Securities Act and the Exchange Act, and are expressly included in Section 16 of the Exchange Act, we do not believe that the conforming changes will have any substantive impact. Rather, we believe that the changes will prevent any ambiguity from arising as a result of differences between the statutes and rules.

As amended, the definition of ''equity security'' in both Securities Act Rule 405 and Exchange Act Rule 3a11–1 will read as follows (new language underscored):

''[a]ny stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; *any security future on any such security*; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.''

II. Administrative Procedure Act Considerations

Pursuant to Section 553(b) of the Administrative Procedure Act,[23] the Commission for good cause finds that prior notice and public comment is unnecessary because, with respect to security futures, these amendments only conform the definitions of the term ''equity security'' in Commission rules to the statutory definition of the term, which was amended by the CFMA. We therefore do not believe that the conforming changes will impact the public or industry. The changes will prevent any ambiguity from arising as a result of differences between the statutes and rules. Because the Commission has found good cause that notice and comment are unnecessary, a regulatory flexibility analysis is not required.[24]

III. Request for Comment

We request comment on the changes we are adopting in this release. The term ''equity security'' is used in a variety of places in the federal securities laws. Although we believe that the inclusion of security futures in the Rule 405 and Rule 3a11–1 definitions will not have any substantive effect, we solicit comment as to whether it could have an effect that we have not considered. Commenters should provide empirical data on any anticipated effects.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Furthermore, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We are simply conforming the definition of ''equity security'' in our rules to the statutory changes with respect to security futures.

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[6] Pub. L. No. 106–554 Stat. 2763 (2000).

[7] H.R. Rep. No. 106–711 (II), at 2 (2000).

[8] 15 U.S.C. 78(f).

[9] 15 U.S.C. 78o–3(a).

[10] The terms ''security future'' and ''narrow-based security index'' are defined in Section 3(a)(55) of the Exchange Act [15 U.S.C. 78c(a)(55)].

[11] 15 U.S.C. 77b(a)(1).

[12] 15 U.S.C. 78c(a)(10).

[13] 15 U.S.C. 78c(a)(11)

[14] The security futures exemption is contained in Section 3(a)(14) of the Securities Act [15 U.S.C. 77c(a)(14)]. Section 3(a)(14) exempts any security futures product that is: (A) cleared by a clearing agency registered under Section 17A of the Exchange Act or exempt from registration under subsection (b)(7) of Section 17A; and (B) traded on a national securities exchange or a national securities association registered pursuant to Section 15A(a) of the Exchange Act.

[15] 15 U.S.C. 781(a). Section 12(a) of the Exchange Act prohibits any broker or dealer from engaging in any transaction in a security on a national exchange, unless the security is registered under the Exchange Act.

[16] 15 U.S.C. 781(g).

[17] Exchange Act Section 16(f) [15 U.S.C. 78p(f)]. Section 16 applies to every person who is the beneficial owner of more than ten percent of any class of equity security registered under Section 12 of the Exchange Act, and each officer and director of the issuer of such security. Under Section 16, these persons must file reports disclosing their transactions in all equity securities of the issuer. We intend to issue a separate interpretive release that will set forth the Commission's views concerning the treatment of security futures under Section 16 and other provisions of the federal securities laws and the rules thereunder.

[18] There is no definition of the term ''equity security'' in the Securities Act, and there is no corresponding definition of the term ''security'' in the Securities Act rules.

[19] 17 CFR 240.12h–1.

[20] *See* Release No. 34–7581 (April 23, 1965). As adopted, Rule 3a11–1 defined ''equity security'' to include such items as limited partnership interests, interests in joint ventures, certificates of interests in business trusts, voting trust certificates, and American Depositary Receipts.

[21] Release No. 33–6383 (March 3, 1982) [47 FR 11819].

[22] Release No. 33–6333 (August 6, 1981) [46 FR 44194].

[23] 5 U.S.C. 553(b)(B).

[24] 5 U.S.C. 603(a), 604(a).

We think that the conformed definitions promote efficiency by conforming the treatment of security futures under the statutes and our rules. We do not expect the amendments to have any anti-competitive effects. We solicit comment on these matters with respect to the amended rules. Will the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act or the Exchange Act?

V. Cost-Benefit Analysis

The amendments we are adopting conform Rule 405 and Rule 3a11–1 to the revisions in the Securities Act and the Exchange Act, with respect to security futures. They do not alter the treatment of security futures under the Securities Act or the Exchange Act, or effect any change in the requirements imposed by the federal securities laws as they relate to security futures. The CFMA established the statutory framework for the treatment of security futures under the federal securities laws and the statutory amendments are self-effectuating. We do not believe that the amendments will have any effect on public companies or small entities. Any effect is the result of the CFMA amendments to both statutes. We request comment on whether the amendments would impose any additional burdens or costs on public companies or small entities outside of the costs or burdens imposed by the CFMA.

VI. Paperwork Reduction Act

Securities Act Rule 405 and Exchange Act Rule 3a11–1 do not contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[25] We are amending Rule 405 and Rule 3a11–1 to include security futures in the definition of ''equity security.'' The CFMA amended Exchange Act Section 16 to state that the section applies to ownership of, and transactions in, security futures products. The Exchange Act rules under Section 16 impose information collection requirements; however, the new requirements under Section 16 were prescribed by the CFMA and would be the same without the amendment to Rule 3a11–1. We therefore are not required to submit the amendments to the Office of Management and Budget for approval under the PRA.

[25] 44 U.S.C. 3501 *et seq.*

VII. Statutory Basis, Text of Rule and Authority

The amendment to the Commission's rule is being adopted pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act and Sections 3(b) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Securities and Exchange Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. In § 230.405 the term ''equity security'' is revised to read as follows:

§ 230.405. Definitions of terms.

* * * * *

Equity security. The term *equity security* means any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–l, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. The undesignated section heading, ''Definition of 'Equity Security' As Used in Sections 12(g) and 16'' preceding § 240.3a4–1 is removed and added to immediately precede § 240.3a11–1.

5. Section 240.3a11–1 is revised to read as follows:

§ 240.3a11–1. Definition of the term ''equity security.''

The term *equity security* is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

Dated: April 17, 2002.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9854 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–136]

RIN 2115–AA97

Security Zone; Lake Erie, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published a temporary final rule on October 12, 2001, creating a security zone surrounding the waters off of Davis Besse Nuclear Power Plant near Toledo, Ohio. The original parameters of that zone blocked approximately 40 beachfront homes from beach access. In the interest of homeowners and recreational boaters within that zone, Captain of the Port (COTP) Toledo has

readjusted the western boundary to allow these homeowners full access to their beachfront property, including use of recreational vessels off that beachfront property. The security zone is necessary to protect the Davis Besse Nuclear Power Plant from terrorist threats.

DATES: This rule is effective from April 2, 2002 through June 15, 2002.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 418–6050.

Background and Purpose

The Coast Guard published a temporary final rule in the **Federal Register** on October 12, 2001, (66 FR 52038), to create a security zone in response to the September 11, 2001 terrorist attacks on the United States. We are changing the location of the western boundary of the security zone.

Need for Correction

Since publication, Captain of the Port Toledo has learned that a western boundary located more easterly or closer to the nuclear plant would allow local home-owners full beach access, including by recreational vessel. This readjustment in no ways compromises the intent of the original security zone. The regulation was published in response to the terrorist's attacks on the World Trade Center and the Pentagon on September 11, 2001. The security zone is intended to protect the life, property, and national security of U.S. citizens. These factors were considered along with the impact on local homeowners and recreational vessels in reestablishing the boundaries of this security zone.

Correction of Publication

In rule FR Doc. 01–25651, published on October 12, 2001, (66 FR 52038) make the following corrections. On page 52038, in the third column, lines 16–23, replace the sentence ''The security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°36.8′ N, 083°06.2′ W; north to 41°37.7′ N, 083°06.0′ W; east to 41°36.6′ N, 083°03.7′ W; south to 41°35.8′ N, 083°04.0′ W, back to the beginning point.'' and add, in it's place, the sentences ''The boundary of the security zone commences at 41°36.3′ N, 083°04.9′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; south-west to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W. These coordinates are based upon North American Datum 1983.''; and on page 52039, in the third column, lines 24–31, remove the sentence ''This security zone consists of all navigable waters of Lake Erie within a line beginning from position 41°36.8′ N, 083°06.2′ W; north to 41°37.7′ N, 083°06.0′ W; east to 41°36.6′ N, 083°03.7′ W; south to 41°35.8′ N, 083°04.0′ W, back to the beginning point.'' and add, in it's place, the sentence ''The boundary of the security zone commences at 41°36.3 N, 083°04.9′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; south-west to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W.''

Dated: April 3, 2002.

David L. Scott,

Commander, U.S. Coast Guard, Captain of the Port Toledo, Toledo, OH.

[FR Doc. 02–9835 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–02–005]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative.

DATES: This temporary final rule is effective from 11:30 a.m. April 22, 2002 through 5:30 p.m. May 15, 2002. The safety zone will be enforced each of these days only from 11:30 a.m. to 5:30 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Diane Kalina, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Because the hazardous condition is expected to last for approximately 4 hours of each day for 24 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. This safety zone should have minimal impact on vessel transits and announcements via Broadcast Notice to Mariners will give vessels advance notice of the launch.

Background and Purpose

The Alaska Aerospace Development Corporation (AADC) will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 1:30 p.m. and 5:30 p.m. each day from April 22, 2002 through May 15, 2002. The safety zone

is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which a launch schedule does not pose a hazard to mariners. Because the hazardous situation is expected to last for approximately 4 hours of each day for 24 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 4 hours each day from April 22, 2002 through May 15, 2002. The size of the safety zone has been set based upon the trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The proposed safety zone includes an area in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area by a line drawn from a point located at 57°26′41″ N, 152°22′23″ W, then northeast to a point located at 57°27′49″ N, 152°18′36″ W, then east to a point located at 57°26′37″ N, 152°09′20″ W, then southeast to a point located at 57°21′07″ N, 151°52′40″ W, then south to a point located at 57°13′25″ N, 152°01′18″ W, then northwest to a point located at 57°20′34″ N, 152°15′48″ W, then northwest to a point located at 57°24′23″ N, 152°22′24″ W and back to the first point. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the rocket. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Because the hazardous condition is expected to last for approximately 4 hours of each day for 24 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Ugak Island and Narrow Cape from 11:30 a.m. to 5:30 p.m. each day from April 22, 2002 through May 15, 2002. Because the hazardous situation, during the planned rocket launch hours, is expected to last for approximately 4 hours of each day for 24 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it would not have a substantial direct affect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.401–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From April 22, 2002, through May 15, 2002, add temporary § 165.T17–008 to read as follows:

§ 165.T17–008 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* This safety zone includes an area in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57°26′41″ N, 152°22′23″ W, then northeast to a point located at 57°27′49″ N, 152°18′36″ W, then east to a point located at 57°26′37″ N, 152°09′20″ W, then southeast to a point located at 57°21′07″ N, 151°52′40″ W, then south to a point located at 57°13′25″ N, 152°01′18″ W, then northwest to a point located at 57°20′34″ N, 152°15′48″ W, then northwest to a point located at 57°24′23″ N, 152°22′24″ W and back to the first point. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zone in this section will be enforced from 11:30 a.m. to 5:30 p.m. each day from April 22, 2002 through May 15, 2002.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: April 11, 2002.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 02–9836 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–008]

RIN 2115–AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones on the navigable waters of the Kankakee River, the Rock River, and Lake Michigan in the Captain of the Port Zone Chicago. These security zones are necessary to protect the nuclear power plants, water intake cribs, water filtration plants, and Navy Pier from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from portions of the Kankakee and Rock River and Lake Michigan.

DATES: This rule is effective from 9 a.m. (local) March 25, 2002 until June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–008 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Burr Ridge, IL 60521 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Al Echols, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life or injury.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely.

This regulation establishes nine temporary security zones for the following facilities: (1) Navy Pier and the Jardine Water Filtration Plant; (2) Dresden Nuclear Power Plant Water Intake; (3) Donald C. Cook Nuclear Power Plant; (4) Palisades Nuclear

Power Plant; (5) Byron Nuclear Power Plant; (6) Zion Nuclear Power Plant; (7) 68th Street Water Intake Crib; (8) Dever Water Intake Crib; and (9) 79th Street Water Filtration Plant.

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Chicago, or his authorized representative, are prohibited from entering or moving within the zones with those exceptions described below. The Captain of the Port Chicago may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Chicago's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, their exact locations, and the restrictions involved via Broadcast Notice to Mariners.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Recreational boaters in portions of the Illinois River and Des Plaines River will be impacted, however recreational traffic in those areas is historically quite low. Commercial river traffic on the Illinois and Des Plaines River will be unimpeded. The Captain of the Port Chicago will generally permit those U.S. Coast Guard certificated passenger vessels that normally load and unload passengers at the Navy Pier to regularly operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U.S. Coast Guard certificated passenger vessels that normally load and unload passengers at the Navy Pier to request permission before leaving or entering the security zones. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before transiting the security zone. This rule will not obstruct the regular flow of traffic and will allow vessel traffic to pass around the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action''

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, security measures, waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–002 is added to read as follows:

§ 165.T09–002 Security Zones; Captain of the Port Chicago Zone, Lake Michigan.

(a) *Location.* The following areas are security zones. All coordinates are based upon North American Datum 1983.

(1) All waters between the Navy Pier and the Jardine Water Filtration Plant shoreward of a line starting at the southeast corner of the Jardine Water Filtration Plant at 41°53′36″ N, 87°36′17″ W, and ending at the northeast corner of the Navy Pier at 41°53′33″ N, 87°35′55″ W, and shoreward of a line starting at the southeast corner of the Navy Pier at 41°53′29″ N, 87°35′55″ W, thence to the east end of Dime Pier at 41°53′23″ N, 87°35′58″ W, thence along the south side of Dime Pier to the west end of Dime Pier at 41°53′23″ N, 87°36′29″ W thence southeast to the corner of the seawall at 41°53′22″ N, 87°36′28″ W;

(2) All waters in the vicinity of the Dresden Nuclear Power Plant south of a line starting at the Illinois River shore at approximate position 41°23′45″ N, 88°16′18″ W, thence east to shore at approximate position 41°23′39″ N, 88°16′09″ W;

(3) All waters of Lake Michigan around the Donald C. Cook Nuclear Power Plant water intakes within a line starting at the shoreline at 41°58.656′ N, 86°33.972′ W, thence northwest to 41°58.769′ N, 86°34.525′W, thence southwest to 41°58.589′ N, 86°34.591′ W, thence southeast to the shoreline at 41°58.476′ N, 86°34.038′ W;

(4) All waters of Lake Michigan around the Palisades Nuclear Power Plant within a line starting at the shoreline in approximate position 42°19′02″ N, 86°19′05″ W, thence northwest to 42°20′10″ N, 86°20′01″ W, thence northeast to 42°19′43″ N, 86°19′52″ W, thence to the shoreline at 42°19′26″ N, 86°18′55″ W;

(5) All waters of the Rock River within a 100-yard radius of the Byron Nuclear Power Plant; with its center in approximate position 42°05′01″ N, 89°19′27″ W;

(6) All waters 100 yards in all directions of the 68th Street Crib, with its center in approximate position 41°47′10″ N, 87°31′51″ W;

(7) All waters 100 yards in all directions of the Dever Crib; with its center in approximate position 41°54′55″ N, 87°33′20″ W;

(8) All waters of Lake Michigan around the Zion Nuclear Power Plant within a line starting from the shoreline in approximate position 42°26′36″ N, 87°48′03″ W, thence southeast to 42°26′20″ N, 87°47′35″ W, thence northeast to 42°26′53″ N, 87°47′22″ W, thence to the shoreline at 42°27′06″ N, 87°48′00″ W;

(9) All waters of Lake Michigan within an arc of a circle with a 100-yard radius centered on the 79th Street Water Filtration Plant, approximate position 41°45′30″ N, 87°33′32″ W.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Chicago. Section 165.33 also contains other general requirements.

(2) The Captain of the Port Chicago will normally permit those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to request permission before leaving or entering the security zone. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before transiting the security zone. This rule will not obstruct the regular flow of traffic and will allow vessel traffic to pass around the security zone.

(3) All persons and vessels shall comply with the instruction of the Captain of the Port Chicago or the designated on-scene U.S. Coast Guard patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zones.

(4) Persons desiring to transit the area of these security zones may contact the Captain of the Port at telephone number (630) 986–2175 or on VHF channel 16 (121.5 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 25, 2002.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port, Chicago.

[FR Doc. 02–9939 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 46

RIN 2900–AJ76

Policy Regarding Participation in National Practitioner Data Bank

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends our regulations regarding reporting of health care practitioners to the National Practitioner Data Bank (NPDB). We are amending the provisions concerning malpractice payment reporting by delegating the underlying decision-making to malpractice payment review panels; by delegating the actual reporting authority to facility directors and the Chief Patient Care Services Officer; by establishing new procedures for obtaining information from affected health care practitioners and others; and by establishing medical reporting criteria for licensed trainees and supervisory health care professionals. We also are amending the regulations concerning malpractice payment reporting and clinical privileges actions reporting by stating that reporting may not be the subject of negotiated settlements and that independent contractors acting on behalf of the Department of Veterans Affairs (VA) are subject to the NPDB reporting provisions. These amendments are necessary to make the reporting process more efficient and fair and to ensure that reporting is accomplished in

accordance with the statutory framework.

DATES: Effective May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kathryn W. Enchelmayer, Director, Credentialing and Privileging, Office of Quality and Performance (10Q), VHA, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202)–273–7464 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 5, 2001, at 66 FR 30141, we proposed to amend our regulations set forth at 38 CFR Part 46 concerning the reporting of physicians, dentists, and other health care practitioners to the NPDB. These regulations concern malpractice payment reporting and clinical privileges actions reporting.

Interested persons were given 60 days to submit comments. The comment period ended August 6, 2001. We received comments from two commenters. One commenter, a representative of a medical association, supported the proposed rule without change. The other commenter, a representative of a medical school, suggested that certain changes should be made. These comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with certain changes discussed below.

The medical school representative objected to the regulations based on the incorrect assumption that VA would report a health care practitioner if the claim constituted a ''nuisance claim'' or ''if the status of a given practitioner as a beneficiary [of a malpractice payment] cannot be demonstrated.'' No changes are made based on this comment. The regulations at § 46.3 provide for reporting only after a determination by at least a majority of a review panel that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the actual health care practitioner to be reported.

The medical school representative asserted that the review panel should consist only of members having the same area of expertise as the practitioner in question ''or, in the alternative, only panel members having such expertise be allowed to vote.'' No changes are made based on these comments. Based on a review of the more than 1,100 paid claims that have been considered by a review panel since 1997, we have concluded that the overwhelming majority of claims do not include issues requiring such specialized expertise. Further, the regulations at § 46.3(b) allow for the review panel to obtain and consider opinions of experts as needed.

The medical school representative asserted that VA should provide legal representation to a health care practitioner during the preliminary tort case and during the subsequent process for determining whether such individual should be reported to the NPDB. No changes are made based on these comments. In matters of dispute, VA must represent VA's interest. VA counsel would create a conflict of interest if they were also to represent a health care practitioner regarding the reporting issues. However, a health care practitioner may obtain personal counsel regarding any submissions to the review panel. Moreover, as stated in § 46.3(b), any prior statements provided by the health care practitioner during the tort consideration process are not included in the information provided to the review panel for consideration.

The medical school representative asserted that the review panel should be required to obtain all necessary information before making a determination on a case. No changes are made based on this comment. Under the provisions of § 46.3(b) the review panel is required to be provided the documents pertinent to the care that led to the claim, including the medical records of the patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, the opinion of any consultant which the panel may request in its discretion and, to the extent practicable, written statements of the individual(s) involved in the care which led to the claim. We believe this is adequate to ensure that a review panel has all of the necessary information for making reporting determinations.

The medical school representative asserted that the review panel should be required to articulate in its conclusions the reasons for reporting a health care practitioner. We agree and have amended § 46.3 accordingly.

The medical school representative asserted that the reporting standards should be based on the local standard of care. No changes are made based on this comment. VA is a nation-wide health care system that is designed to adhere to one standard of care at all health care facilities.

The proposed rule at § 46.3(b) provides that a health care practitioner whose actions are under review will receive a written notice from the VA facility director indicating that VA is considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and providing the practitioner the opportunity, within 30 days of receipt, to submit a written statement concerning the care that led to the claim. Based on our further review of this matter, we believe it is necessary to lengthen the time period allowed for the health care practitioner to respond from 30 days to 60 days to ensure that the practitioner has sufficient time to prepare a response.

Paperwork Reduction Act

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) approved by the Office of Management and Budget under control number 2900–0621.

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking proceeding affects only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, 64.024, and 64.025.

List of Subjects in 38 CFR Part 46

Health professions.

Approved: February 19, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 46 is revised to read as follows:

PART 46—POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK

Subpart A—General Provisions

Sec.

46.1 Definitions.
46.2 Purpose.

Subpart B—National Practitioner Data Bank Reporting

46.3 Malpractice payment reporting.

46.4 Clinical privileges actions reporting.

Subpart C—National Practitioner Data Bank Inquiries

46.5 National Practitioner Data Bank inquiries.

Subpart D—Miscellaneous

46.6 Medical quality assurance records confidentiality.
46.7 Prohibitions concerning negotiations.
46.8 Independent contractors.

Authority: 38 U.S.C. 501; 42 U.S.C. 11101–11152.

Subpart A—General Provisions

§ 46.1 Definitions.

(a) *Act* means The Health Care Quality Improvement Act of 1986, as amended (42 U.S.C. 11101–11152).

(b) *Claim of medical malpractice* means a written claim or demand for payment based on an act or omission of a physician, dentist, or other health care practitioner in furnishing (or failing to furnish) health care services, and includes the filing of a complaint or administrative tort claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

(c) *Clinical privileges* means privileges granted by a health care entity to individuals to furnish health care.

(d) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or dentistry by a State (or any individual who holds himself or herself out to be so authorized).

(e) *Director* means the duly appointed director of a Department of Veterans Affairs health care facility or any individual with authorization to act for that person in the director's absence.

(f) *Gross negligence* is materially worse than substandard care, and consists of an entire absence of care, or an absence of even slight care or diligence; it implies a thoughtless disregard of consequences or indifference to the rights of others.

(g) *Health care facility* means a hospital, domiciliary, outpatient clinic, or any other entity that provides health care services.

(h) *Other health care practitioner* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services.

(i) *Physician* means a doctor of medicine or osteopathy authorized to practice medicine or surgery by a State (or any individual who holds himself or herself out to be so authorized).

(j) *Professional review action* means a recommendation by a professional review panel (with at least a majority vote) to affect adversely the clinical privileges of a physician or dentist taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient, or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist, if the action is primarily based on:

(1) A physician's or dentist's association with, administrative supervision of, delegation of authority to, support for, or training of, a member or members of a particular class of health care practitioner or professional, or

(2) Any other matter that does not relate to the competence or professional conduct of a physician or dentist in his/her practice at a Department of Veterans Affairs health care facility.

(k) *Professional review activity* means an activity with respect to an individual physician or dentist to establish a recommendation regarding:

(1) Whether the physician or dentist may have clinical privileges with respect to the medical staff of the facility;

(2) The scope or conditions of such privileges or appointment; or

(3) Change or modification of such privileges.

(l) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territories or possessions of the United States.

(m) *State Licensing Board* means, with respect to a physician, dentist, or other health care practitioner in a State, the agency of the State, which is primarily responsible for the licensing of the physician, dentist, or practitioner to furnish health care services.

(n) *Willful professional misconduct* means worse than mere substandard care, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries or in reckless disregard of its probable consequences.

§ 46.2 Purpose.

The National Practitioner Data Bank, authorized by the Act and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other health care practitioners. The Act mandates that the Department of Health and Human Services seek to enter into a Memorandum of Understanding with the Department of Veterans Affairs (VA) for the purpose of having VA participate in the National Practitioner Data Bank. Such a Memorandum of Understanding has been established. Pursuant to the Memorandum of Understanding, VA will obtain information from the Data Bank concerning physicians, dentists, and other health care practitioners who provide or seek to provide health care services at VA facilities and also report information regarding malpractice payments and adverse clinical privileges actions to the Data Bank. This part essentially restates or interprets provisions of that Memorandum of Understanding and constitutes the policy of VA for participation in the National Practitioner Data Bank.

Subpart B—National Practitioner Data Bank Reporting

§ 46.3 Malpractice payment reporting.

(a) VA will file a report with the National Practitioner Data Bank, in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made. It is intended that the report be filed within 30 days of the date payment is made. This may not be possible in all cases; e.g., sometimes notification of payment is delayed, and sometimes the malpractice payment review process cannot be completed within the timeframe. The report will provide the following information:

(1) With respect to the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made—

(i) Name;

(ii) Work address;

(iii) Home address, if known;

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;

(v) Date of birth;

(vi) Name of each professional school attended and year of graduation;

(vii) For each professional license: the license number, the field of licensure, and the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) Name of each health care entity with which affiliated, if known.

(2) With respect to the reporting VA entity—

(i) Name and address of the reporting entity;

(ii) Name, title and telephone number of the responsible official submitting the report on behalf of the Federal government; and

(iii) Relationship of the entity to the physician, dentist, or other health care practitioner being reported.

(3) With respect to the judgment or settlement resulting in the payment—

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number;

(ii) Date or dates on which the act(s) or omission(s), which gave rise to the action or claim occurred;

(iii) Date of judgment or settlement;

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement;

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment;

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based; and

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary of Health and Human Services.

(b) Payment will be considered to have been made for the benefit of a physician, dentist, or other licensed health care practitioner only if (at least a majority of) a malpractice payment review panel concludes that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the physician, dentist, or other licensed health care practitioner. For purposes of this part, a panel shall have a minimum of three individuals appointed by the Director, Medical-Legal Affairs (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the panel shall, at a minimum, be based on review of documents pertinent to the care that led to the claim. These documents include the medical records of the patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, and the opinion of any consultant which the panel may request in its discretion. These documents do not include those generated primarily for consideration or litigation of the claim of malpractice. In addition, to the extent practicable, the documents shall include written statements of the individual(s) involved in the care which led to the claim. The practitioner(s) whose actions are under review will receive a written notice, hand-delivered or sent to the practitioner's last known address (return receipt requested), from the VA facility director at the time the VA facility director receives the Notice of Payment. That notice from the VA facility director will indicate that VA is considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and provide the practitioner the opportunity, within 60 days of receipt, to submit a written statement concerning the care that led to the claim. Inability to notify or non-response from the identified practitioner(s) will not preclude completion of the review and reporting process. The panel, at its discretion, may request additional information from the practitioner or the VA facility where the incident occurred. The review panel's notification to the VA facility Director shall include the acts or omissions considered, the reporting conclusion, and the rationale for the conclusion.

(c) Attending staff (including contract employees, such as scarce medical specialists providing care pursuant to a contract under 38 U.S.C. 7409) are responsible for actions of licensed trainees assigned under their supervision. Notwithstanding the provisions of paragraph (b) of this section, actions of a licensed trainee (intern or resident) acting within the scope of his or her training program that otherwise would warrant reporting for substandard care, professional incompetence, or professional misconduct under the provisions of paragraph (b) of this section, will be reported only if the panel, by at least a majority, concludes that such actions constitute gross negligence or willful professional misconduct. For purposes of paragraph (b) of this section, payment will be considered to be made for the benefit of a physician, dentist, or other health care practitioner, in their supervisory capacity, if the panel concludes, by at least a majority, that the physician, dentist or other health care practitioner was acting in a supervisory capacity; that the payment was related to substandard care, professional incompetence, or professional misconduct of the trainee and not the supervisor; and that the trainee did not commit gross negligence or willful professional misconduct. Such report will note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

Note to paragraph (c): Licensed trainees acting outside the scope of their training program (e.g. acting as admitting officer of the day) will be reported under the provisions of paragraph (b) of this section.

(d) The Director of the facility at which the claim arose has the primary responsibility for submitting the report to the National Practitioner Data Bank and for providing a copy to the practitioner, to the State Licensing Board in each State where the practitioner holds a license, and to the State Licensing Board in which the facility is located. However, the Chief Patient Care Services Officer is also authorized to submit the report to the National Practitioner Data Bank and provide copies to the practitioner and State Licensing Boards in cases where the Chief Patient Care Services Officer deems it appropriate to do so. The Director of the facility also shall provide to the practitioner a copy of the review panel's notification to the Director.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0621.)

§ 46.4 Clinical privileges actions reporting.

(a) VA will file an adverse action report with the National Practitioner Data Bank in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:

(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) Acceptance of the surrender of clinical privileges, including the surrender of clinical privileges inherent in resignation or retirement, or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding whether or not the individual remains in VA service.

(b) The report specified in paragraph (a) of this section will provide the following information—

(1) With respect to the physician or dentist:

(i) Name;

(ii) Work address;

(iii) Home address, if known;

(iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974);

(v) Date of birth;

(vi) Name of each professional school attended and year of graduation;

(vii) For each professional license: the license number, the field of licensure, and the name of the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and

(x) Action taken, date action was made final, length of action and effective date of the action.

(2) With respect to the VA facility—

(i) Name and address of the reporting facility; and

(ii) Name, title, and telephone number of the responsible official submitting the report.

(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board in the State(s) in which the practitioner is licensed and in which the facility is located. It is intended that the report be filed within 15 days of the date the action is made final, that is, subsequent to any internal (to the facility) appeal.

(d) As soon as practicable after it is determined that a report shall be filed with the National Practitioner Data Bank and State Licensing Boards under paragraphs (a)(2) and (c) of this section, VA shall provide written notice to the practitioner that a report will be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

Subpart C—National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D—Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

§ 46.7 Prohibitions concerning negotiations.

Reporting under this part (including the submission of copies) may not be the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.

§ 46.8 Independent contractors.

Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.

(Authority: 38 U.S.C. 5705)

[FR Doc. 02–9875 Filed 4–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0322a; FRL–7158–4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from the transfer of gasoline into stationary storage containers and from gasoline bulk plants and terminals. We are approving local rules that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 24, 2002, without further notice, unless EPA receives adverse comments by May 23, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

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

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

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	418	Transfer of Gasoline into Stationary Storage Containers	12/13/00	05/08/01
MBUAPCD	419	Bulk Gasoline Plants and Terminals	12/13/00	05/08/01

On July 20, 2001, this submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved into the SIP on February 15, 1995 (60 FR 8565) a version of Rule 418, adopted on August 25, 1993. We approved into the SIP on January 17, 1997 (62 FR 2597) a version of Rule 419, adopted on November 23, 1994.

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

The purpose of revisions to Rule 418 is to make the rule consistent with the vapor recovery efficiency required by the CARB for certification of vapor recovery equipment used for the transfer of gasoline into stationary storage containers.

The purposes of revisions to Rule 419 ares to remove group I and II definitions, to move the definition of VOC to Rule 101, and to remove an obsolete compliance schedule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The MBUAPCD regulates an ozone attainment area (see 40 CFR part 81), therefore Rules 418 and 419 are not required to fulfill RACT requirements.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR Part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987* ***Federal Register*** *Notice*, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *Federal Attainment Plan for the Monterey Bay Region* (October 1994).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSD for Rule 419 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 23, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approvals will be effective without further notice on June 24, 2002. This will incorporate these rules into the federally-enforceable SIP.

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

III. Background Information

A. Why Were These Rules Submitted?

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

TABLE 2.—OZONE NONATTAINMENT MILESTONES

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

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 5, 2002.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(284)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(284) * * *

(i) * * *

(A) * * *

(*2*) Rules 418 and 419, adopted on December 13, 2000.

* * * * *

[FR Doc. 02–9786 Filed 4–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 257–0345; FRL–7174–1]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing direct final approval of revisions to the California State Implementation Plan (SIP) that were published on March 1, 2002 (67 FR 9403).

DATES: This direct final rule is withdrawn as of April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (Air-3), U.S. Environmental Protection Agency, Region IX, (415) 972–3973.

SUPPLEMENTARY INFORMATION: On March 1, 2002 (67 FR 9424), EPA proposed to approve El Dorado County Air Pollution Control District (EDCAPCD) Rule 523, New Source Review, into the California State Implementation Plan (SIP).

On the same day (67 FR 9403), EPA also published a direct final rule approving these rules into the SIP. The proposed action provided a 30 public comment period and explained that if we received adverse comments, we would withdraw the relevant direct final action.

We did receive adverse comments, and are therefore withdrawing the direct final approval of EDCAPCD Rule 523. We are not opening an additional comment period. We intend to finalize action on these rules based on the March 1, 2002 proposal.

List of Subjects in 40 CFR Part 52

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

Dated: April 11, 2002.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

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

§ 52.220 [Amended]

2. Section 52.220 is amended by removing paragraph (c)(291).

[FR Doc. 02–9788 Filed 4–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 45

[USCG–1998–4623]

RIN 2115–AF38

Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a special load line regime for certain unmanned dry cargo river barges to be exempted from the normal Great Lakes load line assignment while operating on Lake Michigan. Depending upon the route, eligible barges may obtain a limited domestic service load line assignment or be conditionally exempted from any load line assignment at all. This special load line regime will allow non-hazardous cargoes originating at inland river ports to be directly transported as far as Milwaukee and Muskegon by river barge.

DATES: Effective May 23, 2002, except for §§ 45.181 and 45.183 which contain information collection requirements that have not been approved by OMB. We will publish a document in the **Federal Register** announcing the effective date of these two sections. Comments and related material must reach the Docket Management Facility on or before October 23, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 23, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1998–4623), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Thomas Jordan, Office of Marine Safety and Environmental Protection (G–MSE–2), telephone 202–267–2988. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1998–4623), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period. We may change this rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On November 2, 1998, we published a notice of proposed rulemaking (NPRM) entitled ''Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan'' in the **Federal Register** (63 FR 58679). On December 28, 1998, we published a follow-up notice that extended the comment period to March 4, 1999 (63 FR 71411). Altogether, we received 51 letters in response to the proposed rule. No public hearing was requested and none was held.

On September 21, 1992 (57 FR 43479), a notice was published in the **Federal Register** establishing a limited service domestic load line route on western Lake Michigan between Chicago, IL (Calumet Harbor) and Milwaukee, WI.

On March 31, 1995 (60 FR 16693), a notice was published in the **Federal Register** establishing a second route along the east side of Lake Michigan between Chicago and St. Joseph, MI. It also imposed a new requirement that the lead barge in the tow had to have a raked bow, but allowed the initial load line survey of barges which were less than 10 years old to be conducted afloat.

On September 28, 1995 (60 FR 50234), a notice was published in the **Federal Register** revoking the raked bow requirement.

On August 26, 1996 (61 FR 43804), a notice was published in the **Federal Register** extending the St. Joseph route further up the east side of Lake Michigan to Muskegon, MI.

Background and Purpose

Before the establishment of this special load line regime for Lake Michigan, barge cargoes originating at inland river ports and destined for Lake Michigan ports had to be transferred to a Great Lakes load lined vessel at Chicago (Calumet Harbor). This transshipment was necessary because the existing load line regulations did not allow vessels onto the Great Lakes without a Great Lakes load line, and river barges typically do not meet all the requirements for unrestricted service on the Great Lakes. The only exception to this has been an exemption for certain river barges operating between Chicago and Burns Harbor (as specified in 46 CFR 45.171 through 45.177).

In January 1991, the Port of Milwaukee approached the Coast Guard to explore the possibility of establishing a relaxed domestic load line that would allow river barges to operate along the western shore of Lake Michigan between Chicago and Milwaukee. Later that year, a barge company made a similar request for an eastern Lake Michigan route between Chicago and Muskegon, MI. The motivation for these route requests was economic: river barges offer relatively low costs per ton-mile to move cargo and can therefore deliver cargoes to the Lake ports less expensively.

The American Bureau of Shipping (ABS), the Coast Guard, and industry worked together to determine the appropriate operational restrictions and other requirements that would allow river barges to safely venture onto Lake Michigan. In 1992, a special limited service domestic voyage load line regime was implemented for the Milwaukee route. A similar regime was established for the Muskegon route in 1996.

Initially, 30 barges obtained the special load line and began service between Chicago and Milwaukee. From 1993 to 1996, more than 300 barge trips were made, delivering about 502,000 tons of grain, animal feed, steel, machinery, graphite, aggregate, and other materials. However, the cost and logistics of managing a relatively small number of load lined barges over a large river system worked against the economics of this service and, when the original barges were sold in 1996, the new owner discontinued the Milwaukee service. Over the subsequent years, no other barge operators obtained this special load line.

Meanwhile, the Coast Guard had moved ahead with plans to formally incorporate the special load line regime into Federal regulations, which happened in 1998 when a notice of proposed rulemaking (NPRM) was published (63 FR 58679, Nov. 2, 1998). In its response to the NPRM, industry argued that the cost of obtaining the special load line was still too prohibitive, which discouraged barge operators from entering this service. Industry representatives requested that a risk analysis be conducted to determine if a load line exemption could be developed for the Milwaukee route.

Risk Assessment of the Milwaukee Route

The risk assessment group was made up of interested parties, representing towboat and barge operators, port authorities, the Coast Guard, U.S. Maritime Administration (MarAd), and port-related businesses (terminal operators, shippers, etc.). The group met twice (September 21, 2000 and November 9, 2000) to discuss various issues. Additional comments were submitted to the group. These documents have been compiled together into a report, ''*Risk Assessment for River Barges Operating between Chicago, IL and Milwaukee, WI*'', dated September, 2001, which is available in the docket.

Because the cost of the ABS-assigned load line was perceived to be a major obstacle, the group focused on how that cost could be reduced or eliminated in ways such as ''self-certification'' by a barge owner (similar to Burns Harbor operators). Several important findings were made:

(1) It is standard practice for the barge building shipyards to build all new barges in accordance with ABS River Rules;

(2) New barges are not likely to seriously deteriorate during the first 7 to 10 years in service;

(3) Marine weather forecasting for the Great Lakes has improved since the Milwaukee route was first established in 1992; and

(4) The viability of Waukegan and Kenosha as ports-of-refuge were affirmed by a towboat operator with extensive experience on that route.

On the basis of these findings, the group recommended that relatively new barges (less than 7 or 10 years of age) be exempted from the load line requirement.

Discussion of Comments and Changes

The 51 responses to the NPRM were submitted by 42 commenters (some of whom submitted more than one response). Of those commenters, 29 supported the overall proposal, but 17 were specifically concerned about the adverse impact of the proposed regulations on present Burns Harbor operations.

The two major issues discussed by the commenters are as follows:

High cost of load line assignment: Most commenters on the load line requirement alleged that the ABS costs are excessively high, and that these costs are the reason why barge service to Milwaukee was discontinued in 1996 and has not been re-established. Several suggestions were offered on how to lower costs to barge owners: regulating

ABS fees, exempting younger barges, allowing a limited number of exempted voyages each year, Coast Guard inspection (on a cost-reimbursable basis), and ''self- certification'' under Coast Guard oversight.

As a result of a detailed risk review on the Milwaukee route (discussed in the Risk Assessment section in this notice), the Coast Guard has decided to conditionally exempt barges on that route from load line assignment; instead we will accept self-certification by the owner or operator. Barges operating on that route must be registered with the USCG Marine Safety Office in Chicago (just like those on the Burns Harbor route), meet certain design requirements, and cannot be more than 10 years old.

Because such a risk review has not yet been conducted for the St. Joseph and Muskegon routes, we are not exempting those routes at this time. River barges operating on those routes must still obtain the limited service domestic voyage load line assignment from ABS.

Adverse impact of proposed regulations on the Burns Harbor route: Because tows to St. Joseph and Muskegon followed the same route as tows to Burns Harbor, the NPRM attempted to consolidate and harmonize the requirements for these three routes as much as possible. As a result, the Burns Harbor route would become subject to several requirements that were not previously required (such as weather restrictions, tow size limits, and horsepower requirements). Many commenters familiar with the Burns Harbor tow operations stated that these requirements would adversely impact the route, particularly the towing limit of three barges. They pointed out that tow sizes for Burns Harbor are decided on other factors (forecast, loaded/unloaded condition of barges, available towboat power, etc.), and typically could be much more than three barges. The proposed 3-barge limit would therefore have a serious impact, resulting in more voyages and increased fuel and labor costs. The commenters stated that Burns Harbor is a short-haul route with nearly 30 years of safe operational history, and that there is no basis for imposing stricter requirements that are intended for the more-exposed long-haul routes.

The Coast Guard accepts these points. It was not our intent to upset well-established practices on the Burns Harbor route; it was merely to harmonize requirements as much as possible. Therefore, proposed regulations have been revised to preserve the Burns Harbor requirements as currently in effect.

As a result of the comments discussed above, as well as further internal review by the Coast Guard, the following changes have been made to the regulations as proposed in the NPRM:

Editorial changes: We have made editorial changes throughout to improve clarity, intent, and the plain language writing of the regulations.

Section 45.15 Exemptions: Paragraph (d) has been revised to reflect that subpart E provides for load line exemptions for certain routes on Lake Michigan. This paragraph was not originally proposed for revision in the NPRM. However, it is appropriate to revise it since it previously referred only to the Burns Harbor route exemption.

Section 45.171 Purpose: New paragraph (b) has been inserted reiterating that barges on Lake Michigan are required to have a Great Lakes load line except as provided in this subpart. This is to ensure that operators understand that non-compliant barges (and operators) are in violation of load line regulations and thereby subject to penalties.

Table 45.171 Load Line Requirements for Dry Cargo River Barges Operating on Lake Michigan: This table has been revised to reflect exemption of the Milwaukee route, and changes to the Burns Harbor requirements with respect to weather conditions, tow size limits, and horsepower requirements (as discussed elsewhere in this notice).

Section 45.173 Eligible barges: New paragraphs (b) and (c) have been inserted, adding requirements that the barges be designed and built according to ABS River Rules, and that their length-to-depth ratio must be less than 22. Actually, these are not truly new requirements: they have been required in 46 CFR 45.173 since the Burns Harbor exemption was established in 1985, and have been reiterated in each of the **Federal Register** notices establishing the Milwaukee, St. Joseph, and Muskegon routes. However, due to an editorial oversight, they were inadvertently left out of the NPRM and are now being properly included. New paragraph (d) has been added to this section, limiting the barges on the Milwaukee route to less than 10 years old; this is one of the load line exemption conditions for that route.

Section 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes: This section has been revised to include Milwaukee as a load line-exempted route, and to make it clear that this is a conditional exemption. Some of the paragraphs have been titled and editorially re-organized. Some new requirements have been added to enhance Coast Guard oversight: paragraph (a) now makes it clear that barges are to be registered prior to venturing onto Lake Michigan; paragraph (b) now includes a requirement that the exempted route (Burns Harbor and/or Milwaukee) be identified on the registration; paragraph (e) clarifies the conditions under which the registration becomes invalid; and paragraph (f) reiterates that the Coast Guard is to be notified if a registered barge is withdrawn from exempted service.

Section 45.185 Tow limitations: Paragraph (b) has been revised to make sure that Burns Harbor is not included in the 3-barge limit.

Section 45.187 Weather limitations: New paragraph (a) has been inserted to restore the original ''fair weather only'' limit for the Burns Harbor route, and paragraph (b) has been revised to specify the Milwaukee, St. Joseph, and Muskegon routes.

Section 45.191 Pre-departure requirements: Paragraph (d) has been revised to include logging of barge freeboards.

Section 45.193 Towboat power requirements: Paragraph (b) has been revised to remove the Burns Harbor route.

Coast Guard Oversight and Concerns

A major provision in this interim final rule is to conditionally exempt the Milwaukee route from load line assignment. It is anticipated that this will greatly encourage barge and towboat operators to establish service on this route. However, it is not possible to predict how many barges will actually become involved, although comments to the docket suggest that a vigorous trade volume could develop.

Accordingly, the Coast Guard will be monitoring activity on this route with three particular concerns in mind:

(1) Industry compliance with the conditions of the load line exemption (such as barge registration, pre-departure inspections, logbook entries, etc);

(2) The material condition of the barges. The regulations herein are based on the supposition that freshwater barges up to 10 years of age are not likely to deteriorate severely enough to render them unsuitable for Lake Michigan voyages. However, some comments in the risk analysis suggested there be one of the following age limits: not more than 5 years old, or not more than 7 years old; and

(3) The number of tows actually on Lake Michigan at any given time, with respect to the capacity of the ports-of-refuge to accommodate them should

weather conditions deteriorate unexpectedly. For the time being, it is not expected that this will be a problem and therefore the regulations herein do not require any pre-departure notification to the Coast Guard. However, successful growth of cargo movements on this route may eventually require some program of tow coordination.

Therefore, the Coast Guard reserves its prerogative to revise these regulations if we determine that safety is being seriously compromised.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

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

This interim rule is revising existing load line regulations in 46 CFR 45.15, and 46 CFR 45.171 through 45.177, pertaining to certain dry cargo river barges operating on Lake Michigan. Under this rule, eligible barges may qualify for either a limited domestic service voyage load line (Burns Harbor route, St. Joseph route, and Muskegon route), or a conditional load line exemption (Milwaukee route). There are no mandatory costs associated with this rule.

The requirements in this rulemaking are less stringent than the requirements for a normal Great Lakes load line, and serve as cheaper alternatives for qualified barges. This regulatory action imposes costs only on river barge operators who voluntarily decide to obtain the particular load lines as alternatives to the normal Great Lakes load line. Furthermore, this rule reduces the voluntary cost by conditionally exempting barges operating on the Milwaukee route from the limited service domestic voyage load line assignment.

The estimated burden of preparing the submittal for exempting barges on the Milwaukee route from load line assignment is minimal and discussed further in the ''Collection of Information'' section in this preamble. The rule provides qualified barge operators with more commercial opportunities to move certain cargoes on Lake Michigan. The economic impact of this rule on the local region is expected to be beneficial, since these regulations should allow certain cargoes to be transported at a lower cost-per-ton-mile than by the overland modes presently used. Also, these new provisions offer increased flexibility to the river barge operators that choose to operate on the Milwaukee route, the conditionally exempted route from the previously required limited service domestic voyage load line assignment.

Small Entities

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

This interim final rule affects the unmanned dry cargo river barge operators who choose to obtain a limited domestic service load line assignment or a conditional load line exemption while operating on certain routes on Lake Michigan.

There are no mandatory costs to small entities associated with this rule. Furthermore, this rule conditionally exempts qualified barges operating on Milwaukee route from the previously proposed limited service domestic voyage load line assignment. The estimated burden of preparing the submittal to the Coast Guard for exempting barges on the Milwaukee route from load line assignment is minimal and discussed further under ''Collection of Information'' in this preamble. Companies will tend to choose to obtain a limited domestic service load line assignment or conditional load line exemptions while operating on Lake Michigan only if they expect its costs to be offset by increased profits.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Thomas Jordan, Office of Marine Safety and Environmental Protection (G-MSE–2), telephone (202) 267–2988.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The regulations resulting from this rulemaking are within 46 CFR part 45, which pertains to load line regulations for the Great Lakes. The OMB control number for 46 CFR part 45 is 2115–0043.

This rulemaking will modify the population of vessels subject to collection of information by creating a business opportunity for additional vessels to voluntarily enter this service. The NPRM for this rulemaking specifically solicited comments on the collection of information burden; however, none of the responses included any comments on this subject.

The NPRM originally estimated that 12 barges per year would seek load line assignment, at a burden of 9.33 hours per vessel (112 hours total per year). The regulations herein require a much simpler information submittal to the Coast Guard, than that proposed in the NPRM. As a result of the estimated burden hour reduction, a larger number of barges are likely to enter this service (35 barges, instead of the original 12 barges).

The revised Collection of Information estimate is as follows:

Title: Plan Approval and Records for Load Lines

OMB Control Number: 2115–0043.

Summary of the Collection of Information: This rule contains collection of information requirements for 46 CFR 45.181 and 45.183 (load line regulations for vessels operating on the Great Lakes).

Need for Information: For the Coast Guard to carry out its load line administration responsibilities for vessels operating on the Great Lakes.

Proposed Use of Information: For the Coast Guard to verify a barge's compliance/non-compliance with the regulations.

Description of the Respondents: Owners of dry cargo river barges voluntarily seeking to operate on certain Lake Michigan routes; they must submit certain information about each barge in order for it to be eligible for a limited domestic service load line assignment or a conditional exemption from any load line assignment at all.

Number op Respondents: The existing OMB-approved collection number of respondents is 3,410. This rule will increase the number of respondents by 35 to a total of 3,445. We estimated that 30 barges will apply for a conditional exemption and 5 barges will apply for a limited domestic service load line.

Frequency of Response: The existing OMB-approved collection annual number of responses is 20,460. This rule will increase the number of responses by 35 to a total of 20,495. The owners of dry cargo river barges need to respond only one time per barge for the conditional exemption. The initial load line certificate for barges with limited domestic service load line is to be issued for a term of 5 years, or until the barge reaches 10 years of age, whichever occurs first.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) for existing vessels with load lines and 155 minutes (for new vessels with load lines (2.583 hours). This rule will increase the burden of response by 120 minutes (2 hours) for the load line exemption requirements for the Burns Harbor and Milwaukee route and by 35 minutes (0.583 hours) for the load line requirements for the St. Joseph and Muskegon routes.

Estimate of Totel Annual Burden: The existing OMB-approved collection total annual burden is 1,916 hours. This rule will increase the total annual burden by 63 hours to a total of 1,979 hours.

(a) Barges operating on the Burns Harbor and Milwaukee routes may be conditionally exempted from load line assignment if the owner registers the barge (in writing) with the Officer in Charge, Marine Inspection (OCMI), U.S. Coast Guard Marine Safety Office. The registration may be faxed to the OCMI in advance, with the original following by mail. The registration will be kept on file.

The owners for barges operating on the Burns Harbor and Milwaukee routes have to register the barge (in writing) with the OCMI, U.S. Coast Guard Marine Safety Office, only once, prior to its first voyage onto Lake Michigan. The registration may be faxed to the OCMI in advance, with the original following by mail. The registration will be kept on file. The registration is valid until the tenth anniversary of the delivery date (for Milwaukee route), or the barge no longer is fit for this service (due to damage, or the barge changes ownership). The burden associated with the renewal of the registration is minimal.

The Coast Guard estimates approximately 30 river barges per year would seek a conditional exemption from any load line assignment at all. We, also, estimate about 2 hours per barge to gather required information, compile it into a single document and send it to the Coast Guard. Under these assumptions, the annual hour burden to the respondents is the following: Hour Burden: 60 hours = (2 hours/barge) × (30 barges per year).

(b) Barges operating on the St. Joseph and Muskegon routes are required to have a limited-service, domestic voyage load line certificate. The Coast Guard estimates approximately 5 river barges per year would seek a limited domestic load line assignment. The initial load line certificate is to be issued for a term of 5 years, or until the barge reaches 10 years of age, whichever occurs first.

We assume it takes approximately 30 minutes to complete an initial survey application letter.

Under these assumptions, the annual hour burden to the respondents is the following: Hour Burden: 2.5 hours = (0.5 hours/barge) × (5 barges per year).

Furthermore, drafting the load line certificate is assumed to take approximately 5 minutes. Under these assumptions, the annual hour burden to respondents is the following: Hour Burden: 0.42 hours = (0.0833 hour) times (5 barges times 1 certificate).

The total hour burden is: 63 hours = 60 hours plus 2.5 hours plus 0.50 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This rulemaking concerns load line assignments for vessels under U.S. jurisdiction. This is a category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. Exclusion under paragraph (34)(d) applies because this rule pertains to regulations concerning inspection of vessels (*i.e.*, load line requirements). Exclusion under paragraph (34)(e) applies because this rule pertains to regulations concerning carriage requirements (i.e., cargoes are limited to dry, non-hazardous materials). Therefore, this action will not result in substantial change to existing environmental conditions. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 45

Great Lakes, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 45 as follows:

PART 45—GREAT LAKES LOAD LINES

1. The authority citation for part 45 is revised to read as follows:

Authority: 46 U.S.C. 5104, 5108; 49 CFR 1.46.

2. In § 45.15, revise paragraph (d) to read as follows:

§ 45.15 Exemptions.

* * * * *

(d) Unmanned dry cargo river barges carrying non-hazardous cargoes on certain routes on Lake Michigan may be exempted from load line requirements in accordance with the conditions specified in subpart E of this part.

3. Revise subpart E to read as follows:

Subpart E—Unmanned River Barges on Lake Michigan Routes

Sec.

45.171 Purpose.
45.173 Eligible barges.
45.175 Applicable routes.
45.177 Freeboard requirements.
45.179 Cargo limitations.
45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes.
45.183 Load line requirements for the St. Joseph and Muskegon routes.
45.185 Tow limitations.
45.187 Weather limitations.
45.191 Pre-departure requirements.
45.193 Towboat power requirements.
45.195 Additional equipment requirements for the Muskegon route.
45.197 Operational plan requirements for the Muskegon route.

Subpart E—Unmanned River Barges on Lake Michigan Routes

§ 45.171 Purpose.

(a) This subpart establishes a special load line regime under which certain unmanned, river-service, dry-cargo barges may be exempted from the normal Great Lakes load line requirements while operating on certain Lake Michigan routes. Depending upon the route, the barge may only need a limited service domestic voyage load line, or may be conditionally exempted from load line assignment.

(b) Except as provided in this subpart, barges operating on Lake Michigan must have either an international load line assignment issued in accordance with the International Convention on Load Lines, 1966, as amended, or a Great Lakes load line assignment issued in accordance with the requirements of this part.

(c) The requirements of this subpart are summarized in Table 45.171:

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BILLING CODE 4910-15-C

Table 45.171:
Load Line Requirements for Dry Cargo River Barges Operating on Lake Michigan

	Voyages between Chicago (Calumet Harbor), IL and :			
	Burns Harbor, IN	**Milwaukee, WI**	**St. Joseph, MI**	**Muskegon, MI**
1) Load line requirement	Conditionally exempted from load line assignment (must meet requirements below)		"Limited service domestic voyage" load line	
2) Where to register/apply	Exempted barges must be registered with the USCG Marine Safety Office 215 W. 83rd St., Suite D Burr Ridge, IL 60521		Apply for load line to ABS Americas 16855 Northchase Dr. Houston, TX 77060	
3) Eligible barges	Dry cargo river barges Built and maintained in accordance with ABS River Rules Length-to-depth ratio less than 22			
	No age limitation	Not more than 10 years old	No age limitation	
4) Freeboard requirement	All barges: freeboard must be at least 24 inches (610 mm) Open hopper barges: coaming height + freeboard must be at least 54 inches (1,372 mm)			
5) Tow limitations	Barges must be unmanned Not more than 5 nautical miles from shore			
	No limit on number of barges	Not more than 3 barges per tow		
6) Cargo limitations	Dry cargoes only. Liquid cargoes, even in drums or tank containers, are prohibited No hazardous materials. HazMats are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C			
7) Weather limitations If conditions exceed these limits, voyage may not begin, or must be discontinued and vessel must proceed to shelter	"Fair weather" only	Ice conditions: adverse conditions that imperil tow or access to shelter Waves: 4 feet (1.2 m)		
		Sustained winds: 16 kts from NE, E, SE 21 kts from N, NW, W, SW, S	Sustained winds: 16 kts from N, NW, W, SW 21 kts from NE, E, SE, S	
8) Pre-departure preps:	Required -- as specified in § 45.191			
9) Towboat requirements		Sufficient to handle tow, but at least--		
(a) Power:	Sufficient to handle tow	1,000 HP		1,500 HP
(b) Communication system:	Recommended -- § 45.195(a)	Recommended -- § 45.195(a)		Required -- § 45.195(a)
(c) Cutting gear:	Recommended -- § 45.195(b)	Recommended -- § 45.195(b)		Required -- § 45.195(b)
(d) Operational plan:	Recommended -- § 45.197	Recommended -- § 45.197		Required -- § 45.197

§ 45.173 Eligible barges.

Only barges meeting the following requirements are eligible for the special load line regime under this subpart:

(a) Unmanned, river service, dry-cargo barges;

(b) Barges that have been designed and built to at least the minimum scantlings of the American Bureau of Shipping River Rules which were in effect at the time of construction;

(c) Barges with a length-to-depth ratio less than 22; and

(d) Barges on the Milwaukee route must not be more than 10 years old.

§ 45.175 Applicable routes.

This subpart applies to the following routes on Lake Michigan, between Chicago (Calumet Harbor), IL, and—

(a) Milwaukee, WI (the ''Milwaukee route'');

(b) Burns Harbor, IN (the ''Burns Harbor route'');

(c) St. Joseph, MI (the ''St. Joseph route''); and

(d) Muskegon, MI (the ''Muskegon route'').

§ 45.177 Freeboard requirements.

(a) All barges must have a minimum freeboard of 24 inches (610 mm).

(b) Additionally, open hopper barges must have a combined freeboard plus cargo box coaming height of at least 54 inches (1,372 mm).

§ 45.179 Cargo limitations.

(a) Only dry cargoes may be carried. Liquid cargoes, even in drums or tank containers, may not be carried.

(b) Hazardous materials, as defined in part 148 of this chapter and 49 CFR chapter 1, subchapter C, may not be carried.

§ 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes.

Barges operating on the Burns Harbor and Milwaukee routes may be conditionally exempted from load line assignment provided that the following requirements are met:

(a) *Registration.* Before the barge's first voyage onto Lake Michigan, the owner or operator must register the barge (in writing) with the Officer in Charge, Marine Inspection (OCMI), U.S. Coast Guard Marine Safety Office, 215 W. 83rd St—Suite D, Burr Ridge, IL, 60521. The registration may be faxed to the OCMI in advance (at (630) 986–2120), with the original following by mail. The registration may be in any form, but must be signed by the owner or operator. No load line exemption certificate will be returned. However, the registration will be kept on file.

(b) The registration must include the following information:

(1) Barge name and official number (or other identification number);

(2) Owner and operator (points-of-contact, company addresses and telephone numbers);

(3) Service route (Milwaukee and/or Burns Harbor);

(4) Design type (covered/uncovered hopper, deck, etc.);

(5) External dimensions;

(6) Types of cargo; and

(7) Place built and original delivery date.

(c) The registration must include a statement certifying that:

(1) The barge has been designed and built to at least the minimum scantlings of the ABS River Rules which were in effect at the time of construction; and

(2) The owner or operator agrees to maintain the barge in serviceable condition and comply with the applicable provisions of 46 CFR part 45, subpart E.

(d) *Expiration.* Registration is valid only until the earliest of the following events:

(1) The tenth anniversary of the delivery date (for barges on the Milwaukee route),

(2) The barge no longer is fit for this service (due to damage), or

(3) The barge changes ownership or operators (registration is not transferable to new owners or operators; the barge must be re-registered if it is to continue in Lake Michigan service).

(e) *Notification.* The owner or operator of an exempted barge must notify the OCMI of the transfer of ownership or change of operator, withdrawal from Lake Michigan service (due to damage, age, or other circumstances), or other disposition of the barge.

§ 45.183 Load line requirements for the St. Joseph and Muskegon routes.

(a) *Load line certificate.* (1) The load line issued under this subpart must be a limited-service, domestic-voyage load line.

(2) Except as provided under paragraph (b)(2)(vi) of this section, the term of the certificate is five years.

(3) The load line certificate is valid for the St. Joseph and Muskegon routes, and intermediate ports. However, operators must comply with the route-specific requirements on the certificate.

(4) The freeboard assignment, operational limitations, and towboat requirements of this subpart must appear on the certificate.

(b) *Conditions of assignment.* (1) An initial load line survey under § 42.09–25 of this chapter and subsequent annual surveys under § 42.09–40 of this chapter are required.

(2) At the request of the barge owner, the initial load line survey may be conducted with the barge afloat if the following conditions are met:

(i) The barge is less than 10 years old;

(ii) The draft during the survey does not exceed 15 inches (380 millimeters);

(iii) The barge is empty and thoroughly cleaned of all debris, excessive rust, scale, mud, and water. All internal structure must be accessible for inspection;

(iv) Gaugings are taken to the extent necessary to verify that the scantlings are in accordance with approved drawings;

(v) The hull plating (bottom and sides) and stiffeners below the light waterline are closely examined internally. If the surveyor determines that sufficient cause exists, the surveyor may require that the barge be drydocked or hauled out and further external examination conducted; and

(vi) The initial load line certificate is to be issued for a term of 5 years or until the barge reaches 10 years of age, whichever occurs first. Once this certificate expires, the barge must be drydocked or hauled out and be fully examined internally and externally.

§ 45.185 Tow limitations.

(a) Barges must not be manned.

(b) No more than three barges per tow on the Milwaukee, St. Joseph, and Muskegon routes.

(c) Barges must not be more than 5 nautical miles from shore.

§ 45.187 Weather limitations.

(a) Tows on the Burns Harbor route must operate during fair weather conditions only.

(b) The weather limits (ice conditions, wave height, and sustained winds) for the Milwaukee, St. Joseph, and Muskegon routes are specified in § 45.171, table 45.171.

(c) If weather conditions are expected to exceed these limits at any time during the voyage, the tow must not leave harbor or, if already underway, must proceed to the nearest appropriate harbor of safe refuge.

§ 45.191 Pre-departure requirements.

Before beginning each voyage, the towing vessel master must conduct the following:

(a) *Weather forecast.* Determine the marine weather forecast along the planned route, and contact the dock operator at the destination port to get an update on local weather conditions.

(b) *Inspection.* Inspect each barge of the tow to ensure that they meet the following requirements:

(1) A valid load line certificate, if required, is on board;

(2) The barge is not loaded deeper than permitted;

(3) The deck and side shell plating are free of visible holes, fractures, or serious indentations, as well as damage that would be considered in excess of normal wear;

(4) The cargo box side and end coamings are watertight;

(5) All manholes are covered and secured watertight;

(6) All voids are free of excess water; and

(7) Precautions have been taken to prevent shifting of cargo.

(c) *Verifications.* On voyages north of St. Joseph, the towing vessel master must contact a mooring/docking facility in St. Joseph, Holland, Grand Haven, and Muskegon to verify that sufficient space is available to accommodate the tow. The tow cannot venture onto Lake Michigan without confirmed space available.

(d) *Log entries.* Before getting underway, the towing vessel master must note in the logbook that the pre-departure barge inspections, verification of mooring/docking space availability, and weather forecast checks were performed, and record the freeboards of each barge.

§ 45.193 Towboat power requirements.

The towing vessel must meet the following requirements:

(a) *General.* The towing vessel must have adequate horsepower to handle the tow, but not less than the amount specified for the routes below.

(b) *Milwaukee and St. Joseph routes:* a minimum of 1,000 HP.

(c) *Muskegon route:* a minimum of 1,500 HP.

§ 45.195 Additional equipment requirements for the Muskegon route.

Towboats on the Muskegon route must meet these additional equipment requirements:

(a) *Communication equipment.* Two independent voice communication systems in operable condition, such as Very High Frequency (VHF) radio, radiotelephone, or cellular phone. At least two persons aboard the vessel must be capable of using the communication systems.

(b) *Cutting gear.* Equipment that can quickly cut the towline at the towing vessel. The cutting gear must be in operable condition and appropriate for the type of towline being used, such as wire, polypropylene, or nylon. At least two persons aboard the vessel must be capable of using the cutting gear.

§ 45.197 Operational plan requirements for the Muskegon route.

Towing vessels on the Muskegon route must have aboard an operational plan that is available for ready reference by the master. The plan must include the following:

(a) The cargo limitations, the general operational requirements, and the special operational requirements of this subpart.

(b) A list of mooring and docking facilities (with phone numbers) in St. Joseph, Holland, Grand Haven, and Muskegon, that can accommodate the tow.

(c) A list of towing firms (with phone numbers) that have the capability to render assistance to the tow, if required.

(d) Guidelines for possible emergency situations, such as barge handling under adverse weather conditions, and other emergency procedures.

Dated: April 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–9834 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–893, MM Docket No. 00–138, RM–9896]

Digital Television Broadcast Service; Boca Raton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of The School Board of Broward County, Florida, substitutes DTV channel *40 for DTV channel *44 at Boca Raton, Florida. *See* 65 FR 50951, August 22, 2000. DTV channel *40 can be allotted to Boca Raton in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (25–59–34 N. and 80–10–27 W.) with a power of 1000, HAAT of 310 meters and with a DTV service population of 3989 thousand.

With this action, this proceeding is terminated.

DATES: Effective June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–138, adopted April 17, 2002, and released April 22, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel *44 and adding DTV channel *40 at Boca Raton.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–9952 Filed 4–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2002–12111]

RIN 2127–AI30

Motor Vehicle Safety; Prohibitions on Sale or Lease of Defective and Noncompliant Motor Vehicles and Items of Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document implements section 8 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) and section 2504 of the Intermodal Surface Transportation Efficiency Act (ISTEA)

by adding regulations that limit the sale or lease of noncompliant and defective motor vehicles and items of motor vehicle equipment. These sections contain complementary provisions that amend federal motor vehicle safety laws by limiting the sale or lease of defective and noncompliant motor vehicles and equipment.

EFFECTIVE DATE: This final rule will take effect on May 23, 2002.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than June 7, 2002.

ADDRESSES: Petitions for reconsideration may be submitted in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Petitions for reconsideration may also be submitted electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing your petition electronically.

Regardless of how a petition is submitted, the docket number of this document should be referenced in that petition.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Enid Rubenstein, Office of Chief Counsel, NCC–10, NHTSA. Telephone 202–366–5263.

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the National Traffic and Motor Vehicle Safety Act in 1966, now codified, as amended, as 49 U.S.C. Chapter 301 (Safety Act), Federal law has prohibited the sale of new motor vehicles and motor vehicle equipment that fail to comply with an applicable Federal motor vehicle safety standard (FMVSS). See section 108(a) of Public Law 89–563, 80 Stat. 722, codified as 49 U.S.C. 30112(a). However, until 1991, the Safety Act did not contain specific provisions limiting the sale or lease of defective vehicles and equipment. To correct this deficiency, section 2504 of the Intermodal Surface Transportation Efficiency Act (''ISTEA''), Public Law 102–240, 105 Stat. 2081 *et seq.*, amended the Safety Act by adding a new provision, which is codified at 49 U.S.C. 30120(i).

Section 30120(i) states that a dealer who has been provided notification from the manufacturer about a safety-related defect or noncompliance with a Federal motor vehicle safety standard in a new motor vehicle or a new item of motor vehicle equipment in the dealer's possession at the time of the notification may not sell or lease the vehicle or item of equipment unless the defect or noncompliance is remedied as required by section 30120 before delivery under the sale or lease, or notification is required by an order under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies. Thus, if a court sets the order aside, the prohibition will not apply and the sale is permissible.[1]

Section 30120(i) does not prohibit a dealer from offering the vehicle or equipment for sale or lease. Thus, the dealer can offer the vehicle in the showroom but cannot sell or lease it. In the 1990s, NHTSA did not engage in rulemaking with regard to this statutory prohibition.

On November 1, 2000, the TREAD Act, Public Law 106–414, 114 Stat. 1800, was enacted. The statute was, in part, a response to congressional concerns regarding the manner in which various entities dealt with defective motor vehicles and motor vehicle equipment, including tires. During congressional consideration of the bill that eventually was adopted as the TREAD Act, there had been media reports that some persons were selling defective Firestone ATX or Wilderness AT tires that had been returned to dealers for replacement under an ongoing safety recall. The Safety Act did not expressly prohibit such actions, since section 30120(i) does not apply to the sale or lease of used vehicles or equipment.

Section 8 of the TREAD Act added a new subsection (j), ''Prohibition on sales of replaced equipment,'' to 49 U.S.C. 30120, effective November 1, 2000. This subsection provides that no person may sell or lease any motor vehicle equipment (including a tire) that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c), for installation on a motor vehicle, in a condition that it may be reasonably used for its original purpose. Under section 30120(j)(1) and (2), the foregoing prohibition does not apply if the defect or noncompliance is remedied as required by 49 U.S.C. 30120, including implementing regulations, before delivery under the sale or lease; or if notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

Sections 30120(i) and (j) are complementary provisions. Section 30120(i), the ISTEA provision, applies only to dealers in new motor vehicles and new items of motor vehicle equipment. Section 30120(j), the TREAD Act provision, applies to all persons who sell or lease motor vehicle equipment for installation on a motor vehicle, in a condition that the equipment may reasonably be used for its intended purpose, and to both new and used equipment. To implement both statutory subsections, we proposed to revise 49 CFR part 573 by adding two separate regulatory sections, one (§ 573.11) applicable to the sale or lease of defective or noncompliant new motor vehicles and new items of motor vehicle equipment by dealers (including retailers of new motor vehicle equipment) and the other (§ 573.12) applicable to the sale or lease of defective or noncompliant new and used motor vehicle equipment by any person. While sections 30120(i) and (j) do not require rulemaking for their effectuation, NHTSA believes that there will be two benefits to rulemaking. First, rules will largely reduce, if not eliminate, questions relating to the meaning of the prohibitions. Second, there are benefits to codifying the prohibitions, which complement other rules, in the Code of Federal Regulations.

The New Regulatory Provisions

In view of the ISTEA and the TREAD Act, we are revising 49 CFR 573.3(a) by specifying those to whom new §§ 573.11 and 573.12 apply and we are amending 49 CFR part 573 to include, at §§ 573.11 and 573.12, the prohibitions established by 49 U.S.C. 30120(i) and (j), respectively. These amendments are

[1] Section 30118(c) requires manufacturers of motor vehicles or equipment to provide notification of safety-related defects or noncompliances with motor vehicle safety standards to NHTSA, as well as to the owners, purchasers and dealers of the vehicle or equipment.

Section 30118(b) authorizes the Secretary to make a final decision that motor vehicles or equipment contain a safety-related defect and/or do not comply with an applicable motor vehicle safety standard and, in that event, order the manufacturer to give notification of the defect or noncompliance to owners, purchasers, and dealers of the vehicles or equipment, and order the manufacturer to remedy the defect or noncompliance without charge.

Section 30121 authorizes the Secretary to require a manufacturer to issue a provisional notification about an order issued under section 30118(b) if the manufacturer contests that order. Section 30121 also authorizes a court to enjoin enforcement of the Secretary's order under section 30118(b) if the court decides that failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. (A manufacturer that fails to issue a provisional notification is subject to civil penalties unless a court enjoins enforcement of the order under section 30118(b)). *See generally Ford Motor Co.* v. *Coleman*, (402 F. Supp. 475 (D.D.C. 1975) (3-judge court), *aff'd mem.* 425 U.S. 927 (1976).

identical to those proposed in the NPRM (66 FR 38247 *et seq.* (July 23, 2001), except that we have added a clarification to proposed § 573.3(h) to reflect the provision in 49 U.S.C. 30121 that the term ''dealer'' includes a retailer of motor vehicle equipment and clarified the scope of proposed § 573.11.

Section 573.11 Prohibition on Sale or Lease of New Defective or Noncompliant Motor Vehicles and Motor Vehicle Equipment [2]

Section 573.11, which implements 49 U.S.C. 30120(i), applies to dealers, including retailers of motor vehicle equipment, and covers the sale and lease of new motor vehicles and motor vehicle equipment. It provides that a dealer may not sell or lease defective or noncompliant new motor vehicles or items of motor vehicle equipment. By its terms, 49 U.S.C. 30120(i) applies to new motor vehicles and new items of motor vehicle equipment.[3] Thus, the requirements of 49 CFR 573.11 do not apply to used motor vehicles and used equipment.

Several prerequisites must occur in order for the prohibition on the sale or lease of new motor vehicles or equipment under section 30120(i) to apply. First, notification of a defect or noncompliance must have been required by an order under section 30118(b) or under section 30118(c). Second, a dealer must have been notified of the defect or noncompliance. Finally, the dealer must be in possession of the vehicle or equipment.

The regulatory text at § 573.11 reflects two statutory exceptions that permit the dealer to sell or lease new motor vehicles or equipment items that have been determined to be defective or noncompliant. See 49 U.S.C. 30120(i). First, the dealer may sell or lease the motor vehicle or item of equipment if the defect or noncompliance is remedied as required by section 30120 before delivery under the sale or lease. Second, the sale or lease is permissible when notification is required by an order under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies. Thus, if a court sets the order aside, as stated above, the prohibition will not apply and the sale is permissible. Finally, section 30120(i) states that it does not prohibit a dealer from simply offering the vehicle or equipment for sale or lease, without actually selling it.

Section 573.12 Prohibition on Sale or Lease of New or Used Defective and Noncompliant Motor Vehicle Equipment

Section 573.12 of the rule implements 49 U.S.C. 30120(j), which provides that '' *no person* may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) in a condition that it may be reasonably used for its original purpose'' (emphasis added). In this statutory section, Congress chose to use the general term ''no person'' as opposed to the more restricted categories of ''manufacturer'' and ''dealer'' used in section 30120(i) and elsewhere in Chapter 301. In view of the breadth of the term ''no person,'' § 573.12 is not limited to persons in particular classes or categories. Rather, the rule's prohibition applies to the actions of all persons, including individuals and business entities such as corporations. The rule clearly applies to retailers of equipment, including tires.

The activities that are covered by 49 CFR 573.12, based on 49 U.S.C. 30120(j), are selling or leasing, ''for installation on a motor vehicle,'' any motor vehicle equipment (including a tire), that is the subject of a decision under section 30118(b) or a notice required under section 30118(c). Accordingly, the rule will apply to businesses and individuals that sell new or used automobile parts, including tires. While § 573.12 prohibits the sale or lease of equipment including tires for installation on a motor vehicle, it does not prohibit a person from selling or leasing a new or used vehicle that is equipped with defective or noncompliant equipment or tires.[4] For example, a motor vehicle dealer is not subject to the prohibition of this rule except with respect to equipment and tires that the dealer sells or leases separately from a vehicle. Similarly, motor vehicle lessors and motor vehicle rental companies are not subject to this rule because these groups are selling and leasing vehicles, not equipment or tires for use on motor vehicles.

49 CFR 573.12 prohibits the selling or leasing of any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c). In section 30120(j), Congress chose to restrict the sale or lease of motor vehicle equipment, without limitation. Thus, the prohibition includes all equipment, including used equipment as well as new equipment.[5]

49 U.S.C. 30120(j) prohibits the sale of equipment in a condition that it may be reasonably used for its original purpose. Accordingly, § 573.12 prohibits only the sale of equipment and tires that are still in a condition in which they can be used for the purpose for which they were originally intended. Thus, the rule does not apply to equipment and tires that have been permanently altered in a way that they can no longer be reasonably used for their original purpose. For example, a tire that has been drilled with holes for eyebolts may be sold for use as part of a playground swing.

Section 30120(j)(1) provides that the prohibition on the sale of equipment applies unless ''the defect or noncompliance is remedied as required by this section before delivery under the sale or lease.'' Therefore, the equipment may be sold if it has been repaired so that it is no longer defective or noncompliant.

The sale of the equipment will also be allowed if ''notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30121(d) applies.'' Under section 30118(b), if it is determined that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard, the manufacturer is ordered to give notification of the defect or noncompliance under section 30119 to owners, purchasers and dealers of the

[2] The title of section 30120(i) refers to a ''limitation'' on the sale or lease of vehicles or equipment, whereas the title of section 30120(j) refers to a ''prohibition'' on the sale of replaced equipment. In the NPRM, we proposed to use the term ''limitations'' to cover both statutory sections. However, throughout the preamble to the NPRM, we discussed various ''prohibitions,'' as we have done again in the preamble to this rule. Also, in the revised title to 49 CFR part 573 that we proposed in the NPRM, we used the term ''prohibitions.'' Therefore, for consistency, we have decided to use the term ''prohibitions'' rather than ''limitations'' in both sections of the final rule, as well as in the revised title to 49 CFR part 573.

[3] The terms ''dealer,'' ''motor vehicle'' and ''motor vehicle equipment'' are defined at 49 U.S.C. 30102(a)(1), (6) and (7).

[4] As discussed above, the sale or lease of a new vehicle with defective or noncompliant equipment or tires is already prohibited by 49 U.S.C. 30120(i) and will be prohibited by 49 CFR 573.11.

[5] We recognize that the title of section 30120(j) refers to ''replaced equipment.'' The U.S. Supreme Court has long held that the title of a statutory provision cannot overcome the plain and unambiguous meaning of the words used in the text of the statute. *See Knowlton* v. *Moore*, 178 U.S. 41 (1900). Thus, since the language of section 30120(j) is not limited, its reach extends to all motor vehicle equipment that has been found to be defective or noncompliant, regardless of whether it is original equipment or replacement equipment, despite the fact that the title of the subsection refers only to ''replaced equipment.''

vehicle or equipment.[6] However, if enforcement of the order is restrained or the order is set aside by a court, the prohibition in section 30120(j) does not apply, and, therefore, the sale of the equipment in its unremedied condition is permissible during the period when the order is not effective.

Response to Comments

We received three comments on the NPRM, including one from a trade association (the National Automobile Dealers Association (''NADA'')) and two from consumer groups (Advocates for Highway and Auto Safety (''Advocates'') and Public Citizen). We did not receive any comments from manufacturers.

The comments were generally supportive of the proposed regulations. They are summarized below.

(1) Advocates fully supported the NPRM and urged its adoption, without any suggested revisions.

(2) NADA supported the issuance of the rule but suggested a number of substantive and editorial changes. The principal substantive change suggested was, in essence, to make both new § 573.11 and § 573.12 duplicate each other, by providing in both that there is no limitation on the sale or lease of defective or noncompliant motor vehicles or motor vehicle equipment unless the dealer has received actual notice of the defect or noncompliance from the manufacturer. Although NADA acknowledged that statutory subsections (i) and (j) differ from each other in that subsection (i) requires such notice whereas (j) does not, the association nevertheless requested that NHTSA use its discretion to extend subsection (i)'s notice condition to subsection (j), on grounds that this would create ''fairness'' to dealers.

We have decided against making NADA's proposed change. Under the ordinary rules of statutory construction, Congress is presumed to have intended the effects of linguistic differences between statutory provisions. *See* 2A Sutherland, Statutory Construction (6th Ed. Singer, 2000) at § 46.06: ''In like manner, where the legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.'' This is particularly true where, as here, the statutory provision that contains the notice requirement (in this case, subsection (i)), was enacted several years before the statutory provision that does not contain the notice requirement (in this case, subsection (j)). Congress clearly knew how to draft a notice requirement when it wanted to include one: it did so in 1991 in enacting subsection (i), but it did not do so nine years later when it enacted subsection (j).

In addition, under the ordinary rules of statutory construction, statutes are to be read to effectuate all of their provisions: ''It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.'' 2A Sutherland, *supra,* at § 46.06, citing *United States* v. *Menasche,* 348 U.S. 528 (1955); *Plaut* v. *Spendthrift Farm, Inc.,* 514 U.S. 211 (1995). If we followed NADA's suggestion and ignored the differences between subsections (i) and (j) with respect to notice, the regulation would not be consistent with this rule of construction and would fail to effectuate subsection (j), which by its terms does not require notice from the manufacturer.

NADA also disputed ''any suggestion'' (in the preamble to the NPRM) that the section 30120(i) restriction applies to new motor vehicles or equipment not in the dealer's possession at the time of notification. NADA claimed that (1) vehicles that have already been delivered and are no longer in a dealer's possession; (2) vehicles that have been sold but not yet left the dealer's possession prior to the dealer's receipt of notification; and (3) vehicles that the dealer has not yet received when it receives notification from the manufacturer are not subject to section 30120(i).

We agree with some of NADA's comments, but not others. With respect to the first, the vehicles or equipment that have already been delivered to purchasers are beyond the coverage of this statutory section, which applies only to items ''in the dealer's possession,'' and in any event will be covered by a notification from the manufacturer to the owner. In the second situation posited by NADA, the delivery to the purchaser has not occurred. The dealer, who has possession of the vehicle or equipment, must bring it into compliance or remedy the defect before it is delivered to the purchaser. Requiring the dealer to carry out the remedy before delivering the vehicle to the purchaser will both implement the statutory text and effectuate the underlying statutory purpose. In these circumstances, there is no valid reason to excuse the dealer from remedying the defect or noncompliance in such vehicles and thereby permit the dealer to deliver unsafe vehicles to purchasers.

NADA's third category is more problematic. Section 30120((i) states that it applies when the manufacturer ''has provided * * * notification about a new * * * vehicle or * * * item of * * * equipment in the dealer's possession at the time of notification * * *.'' NADA pointed out that the preamble and proposed regulatory text in the NPRM raised issues about the meaning of this phrase. The statutory text requires possession, which in our view includes both actual and constructive possession. Although we would expect that dealers would remedy vehicles and equipment that are the subject of notice but not yet in the dealer's actual or constructive possession at the time of notification, the statutory language of section 30120(i) does not impose such a requirement. Accordingly, we have modified the proposed text of § 573.11(a) to state explicitly that the prohibition applies to vehicles or equipment in the dealer's actual or constructive possession at the time of the manufacturer's notification. However, we note that manufacturers normally include ''stop sale'' or ''stop delivery'' instructions in their notifications to dealers of defects and noncompliances, and, as noted earlier, 49 U.S.C. 30112(a) contains an independent prohibition against the sale of noncompliant vehicles or equipment. Moreover, state consumer protection and tort laws may impose additional duties on dealers.

NADA also requested that proposed § 573.12 be modified to add a new subsection specifying that the prohibition does not apply if ''(a) person * * * did not possess the motor vehicle equipment at the time of such notice.'' We have not made NADA's suggested modification because, as explained earlier in this preamble, we have concluded that the requirement for manufacturer notification does not apply to § 573.12.

In addition, NADA proposed to add a new section to § 573.12, stating that the prohibition does not apply to any item of equipment that has been installed in a new or used motor vehicle. As indicated above, we do not believe that this subsection is necessary. As we stated in the preamble to the NPRM, it is clear from the text of § 573.12(a) of the proposed rule, which specifically prohibits selling or leasing ''any new or used item of motor vehicle equipment * * * *for installation* on a motor vehicle,'' that the section does not apply to equipment that already has been installed. NADA made a similar suggestion with regard to our rule regarding reporting the sale or lease of defective or noncompliant tires, 49 CFR 573.10. As in that rule (see 66 FR 38161,

[6] Section 30119 sets out the notification procedures the manufacturer must follow.

July 23, 2001), we do not believe that such a clarification is necessary.

(3) Public Citizen did not oppose the proposed regulation, but argued that its text revealed ''gaps'' in the scope of the underlying statute and urged the agency to seek further legislative amendments during the forthcoming reauthorization process. Public Citizen's suggested amendments would (1) extend 49 U.S.C. 30120(i) to used motor vehicles and motor vehicle equipment and (2) extend 49 U.S.C. 30120(j) to those who lease or rent motor vehicles. Public Citizen did not argue that we should extend the regulation in the face of admittedly absent statutory authority. Because a comment on an NPRM is not an appropriate mechanism for submitting a legislative proposal, we are not responding here to the substance of Public Citizen's suggestion.

Regulatory Analyses and Notices

1. E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule has not been reviewed under E.O. 12866, ''Regulatory Planning and Review.'' After considering the impacts of this rulemaking action, we have determined that the action is not ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures. There are statutory prohibitions in place and these rules, which essentially incorporate the statutory prohibitions, will not increase the burdens on those covered by those prohibitions. The impact of this rule will be so minimal as not to warrant preparation of a full regulatory evaluation because these provisions only involve prohibitions on sales of defective and noncompliant vehicles and equipment, which are rare even absent the rule. In light of the statutory provisions, this action does not involve a substantial public interest or controversy. The rulemaking action will not have a substantial impact on any transportation safety program or on state and local governments.

2. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rule will have no significant economic impact on a substantial number of small entities. The impact of this rule is expected to be so minimal as not to warrant preparation of a full regulatory flexibility analysis because this provision only involves prohibitions on sales or leases of vehicles or equipment that have been determined to be defective or noncompliant. The incidence of covered sales and leases would be small even absent this rule. Moreover, although many dealers are small entities, another provision of the Safety Act requires manufacturers (or distributors) to reimburse dealers both for the value of the dealer's labor in installing replacement parts and for a prorated portion of the manufacturer's or distributor's selling price, for remedying defective or noncompliant vehicles or equipment prior to sale. See 49 U.S.C. 30116.

Governmental jurisdictions will not be affected by this rule.

3. E.O. 13132 (Federalism)

E.O. 13132 requires NHTSA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. E.O. 13132 defines the term ''policies that have federalism implications'' to include regulations that 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.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

4. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act, 42 U.S.C. 4321. The action will not have a significant effect upon the environment.

5. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

6. Paperwork Reduction Act

NHTSA has determined that this notice will not impose a new collection of information burden within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3502.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more that $100 million annually. Because a final rule based on this proposal will not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 573

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR part 573 as set forth below.

PART 573—REQUIREMENTS AND PROHIBITIONS APPLICABLE TO SAFETY DEFECT AND NONCOMPLIANCE RECALLS

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50

2. Revise the heading of part 573 to read as set forth above.

3. In § 573.3, revise paragraph (a) and add paragraphs (h) and (i) to read as follows:

§ 573.3 Application.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, this part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle original and replacement equipment, with respect to all vehicles and equipment that have been transported beyond the direct control of the manufacturer.

* * * * *

(h) The provisions of § 573.11 apply to dealers, including retailers of motor vehicle equipment.

(i) The provisions of § 573.12 apply to all persons.

4. Add § 573.11 to read as follows:

§ 573.11 Prohibition on sale or lease of new defective and noncompliant motor vehicles and items of replacement equipment.

(a) If notification is required by an order under 49 U.S.C. 30118(b) or is required under 49 U.S.C. 30118(c) and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession, including actual and constructive possession, at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard issued under 49 CFR part 571, the dealer may sell or lease the motor vehicle or item of replacement equipment only if:

(1) The defect or noncompliance is remedied as required by 49 U.S.C. 30120 before delivery under the sale or lease; or

(2) When the notification is required by an order under 49 U.S.C. 30118(b), enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

(b) Paragraph (a) of this section does not prohibit a dealer from offering the vehicle or equipment for sale or lease, provided that the dealer does not sell or lease it.

5. Add § 573.12 to read as follows:

§ 573.12 Prohibition on sale or lease of new and used defective and noncompliant motor vehicle equipment.

(a) Subject to § 573.12(b), no person may sell or lease any new or used item of motor vehicle equipment (including a tire) as defined by 49 U.S.C. 30102(a)(7), for installation on a motor vehicle, that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c), in a condition that it may be reasonably used for its original purpose.

(b) Paragraph (a) of this section is not applicable where:

(1) The defect or noncompliance is remedied as required under 49 U.S.C. 30120 before delivery under the sale or lease;

(2) Notification of the defect or noncompliance is required by an order under 49 U.S.C. 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

Issued on: April 16, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–9773 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 78
Tuesday, April 23, 2002

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0578–AA27

Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Proposed Rulemaking with request for comments.

SUMMARY: The United States Department of Agriculture (USDA) is issuing a proposed rule setting out certain categorical minimal effect exemptions (CMWs) under the wetland conservation provisions of the Food Security Act of 1985, as amended. This proposed rule identifies five (5) wetland conversion activities, which due to the type of wetlands or other criteria, would only have a minimal effect upon wetland functions and values, and thus would not render a producer ineligible for certain USDA program benefits. USDA is seeking comments from the public that will be considered in developing a final rule.

DATES: Comments must be received by June 24, 2002.

ADDRESSES: All comments concerning this proposed rule should be addressed to Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, Attention: CMW rule, or by e-mail: *Floyd.Wood@usda.gov,* Attention: CMW rule. This rule may also be accessed, and comments submitted, through the Internet. Users can access the NRCS **Federal Register** home page and submit comments to the Web site *http://www.nrcs.usda.gov.* From the menu, select ''Farm Bill.''

FOR FURTHER INFORMATION CONTACT: Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, Phone: (202) 690–1588 or Fax: (202) 720–2143.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to section 6(a)(3) of Executive Order 12866, the Commodity Credit Corporation (CCC) and Natural Resources Conservation Service (NRCS) conducted an economic analysis of the potential impacts associated with this proposed rule. The economic analysis concluded that the past 11 years of experience in implementing the minimal effect exemptions demonstrates that the provisions will reduce the compliance burden upon landowners while protecting wetland functions and values. CCC and NRCS believe that identification of categorical minimal effects will improve implementation of the wetland conservation provisions by reducing unnecessary administrative burdens on producers and the USDA agencies. NRCS estimates that the use of the CMWs will reduce clients' savings of approximately 27,000 hours per year. Similar savings would be realized by NRCS in a reduction of resources necessary to prepare and analyze wetland conservation provision exemptions. A copy of this cost-benefit analysis is available upon request from Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule since it does not contain a major proposal requiring preparation of a regulatory analysis under the E.O. This regulation will not have a significant economic impact on a substantial number of small entities. This proposal will not alter or expand the wetland conservation provisions but allow activities already eligible for minimal effect exemptions to be reviewed and approved in a more expedited manner.

National Environmental Policy Act

It was determined through an environmental assessment that the issuance of this proposed rule will not have a significant impact upon the human environment. Copies of the environmental assessment may be obtained from Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

No substantive changes were made by this proposed rule that affect the record keeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0004.

Executive Order 12788

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule except that private persons and entities may be subject to such State and local laws outside of the Food Security Act of 1985. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at CFR parts 11, 614, 780, and 1900 Subpart B of this title, as appropriate, must be exercised and exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, the effects of this rulemaking action on State, local, and Tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore a statement under § 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Wetland Conservation Provisions

Title XII of the Food Security Act of 1985, as amended (the 1985 Act), encourages participants in USDA programs to protect highly erodible land and wetlands by linking eligibility for certain USDA program benefits to farming practices on highly erodible land and wetlands. In particular, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland.

However, the 1985 Act also provides that certain activities can be conducted in wetlands, so long as those activities have a minimal effect on the wetland's functions and values. That is, an action individually and in connection with all other similar actions, will have a minimal effect on the functional hydrological and biological values of the wetlands in the area, including the values to waterfowl and wildlife. Each NRCS State Office is led by a State conservationist, one of whose duties is to ensure that minimal effect determinations are completed according to the 1985 Act. NRCS conducts functional assessments of wetlands, using acceptable methodology for the area where the action is proposed, to ascertain the effects of the action on the hydrological and biological functions. The decision to grant a minimal effect exemption is based primarily on the magnitude of change in wetland functions as a result of the action.

The USDA issued a final rule implementing the WC provisions of the 1985 Act on September 17, 1987. These regulations, found at 7 CFR part 12, provided the terms of program ineligibility, described the several exemptions from ineligibility, outlined the responsibilities of the several USDA agencies involved in implementing the provisions, and generally established the framework for administration of the provisions. The field offices of NRCS have operated under the final rule since September 17, 1987, in making minimal effects determinations through functional assessment procedures.

The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), amended the 1985 Act and made some significant modifications to the WC provisions. In particular, the amendments made by the 1990 Act provided that in addition to the planting on a converted wetland violation rule, any person who in any crop year after November 28, 1990, converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect of making the production on an agricultural commodity possible, shall be ineligible for certain USDA program benefits for that crop year and all subsequent crop years until the wetland is restored or mitigated, unless exemptions to the Act apply.

The Federal Agriculture Improvement and Reform Act (the 1996 Act), enacted April 4, 1996, made several changes to increase the options available so producers could comply with WC provisions in their farming and ranching activities. USDA adopted these changes in an interim final rule for Part 12, published September 6, 1996, in the **Federal Register** Volume 61, Number 174, pages 47019–47038.

To increase program participants' certainty about whether an activity would qualify for a minimal effect exemption and to reduce the need for site-specific determinations, Congress required the Secretary of Agriculture to promulgate a regulation identifying categories of activities determined to minimally effect wetland functions and values. Section 322(c) of the 1996 Act, 16 U.S.C. 3822 d), directs the Secretary of Agriculture to identify, by regulation, ''categorical minimal effect exemptions on a regional basis to assist persons in avoiding a violation'' of the wetland conservation provisions. This change was not included in the interim final regulation, as it required additional technical analysis by USDA. This proposed rule implements the mandate found in section 322(c) of the 1996 Act and codified at 16 U.S.C. 3822(d). The CMW rule would also remain a separate rule to facilitate future modification, if necessary.

Categorical minimal effect exemptions are those categories of actions that can be taken in wetlands without loss of eligibility for certain USDA programs, because they have routinely been determined to have only a minimal effect on the functions of wetlands associated with that category. To qualify as a categorical minimal effect exemption under the 1996 Act, a proposed action must historically have been determined by NRCS, individually and collectively with all other similar actions authorized by the Secretary in the area, to have a minimal effect on the hydrological and biological functions of wetlands in the area, including values to waterfowl and wildlife. The presence of hydrological and biogeochemical functions is critical to the presence and maintenance of wetland floral and faunal communities and habitat. Additionally, NRCS uses the original scope and effect of prior hydrologic manipulation as a baseline to determine whether maintenance activities exceed the original scope and effect. Activities exceeding the original scope and effect will still be allowed when the manipulation qualifies for an USDA exemption, including the CMWs. Therefore, a decision to include a particular CMW is based on a historical analysis by NRCS at the local level on the presence and degree of hydrological and biogeochemical functions, the impact on those functions caused by installation of the proposed CMW, and the subsequent effects on associated floral and faunal communities.

Identification of CMWs

NRCS has 14 years of experience in making minimal effect determinations in the field, using approved functional assessment procedures, on a case-by-case basis. To begin the process of developing CMWs, each NRCS State conservationist reviewed past minimal effect activities to identify categories of where exemptions were routinely granted, developed proposed CMWs, and reviewed the proposed CMWs with the State Technical Committee (STC). The STC includes members of other Federal agencies, state natural resource agencies, producer organizations, and other groups, organizations, and private individuals. Each STC reviewed and made recommendations to their respective State conservationist about the proposed CMWs. The State conservationists then decided which CMWs would be proposed and forwarded them to the NRCS National Office for consideration. Based on the records of prior minimal effect determinations available to them, the State Conservationists proposed a total of 16 CMWs.

The NRCS National Office assembled an interdisciplinary team with representatives from each NRCS region and an U. S. Fish and Wildlife Service employee to review the 16 proposed CMWs to ensure they met statutory and regulatory requirements. NRCS requested that the U.S. Fish and Wildlife Service participate with this team to address the impacts of the alternatives on the wildlife habitat requirements, as well as to help satisfy potential impacts to species subject to the provisions of the Endangered Species Act. This review included all proposed CMWs as well as identifying any additional conditions necessary to ensure a CMWs had only minimal effects on wetland functions and values. In addition, all public comments concerning CMWs provisions received during the comment period for the Highly Erodible Lands/Wetland Interim Final Rule published September 6, 1996, were reviewed. As part of the review, the team used the NRCS Land Resource Regions and Major Land Resource Areas map to determine the regional applicability of the proposed CMWs. Each of the CMWs in the proposed rule has the applicable region identified based on the Land Resource Area and Major Land Resource Area codes, as well as a reference map. After review, the team agreed that the following 5 of the proposed 16 CMWs meet the requirements set forth in the 1996 Act. This rule proposes to amend subpart C of 7 CFR part 12 to include

the 5 CMWs. USDA finds that the identification of the following CMWs will improve the implementation of the WC provisions of the 1985 Act, as amended:

CMW #1—Removal of Woody Vegetation, Including Stumps from Natural Herbaceous Wetlands

USDA determined that small areas have developed into woody vegetation on prairie soils, usually through lack of maintenance practices. These areas exist because natural events such as wildfire and grazing, which would have resulted in the succession of a non-woody vegetative community, may no longer occur. The action implicates the application of the WC provisions because the removal of woody vegetation makes possible the production of an agricultural commodity in a wetland area. However, USDA determined that such action, when conducted under specified conditions identified in the proposed rule, will not have a significant impact on wildlife and fish habitat, will enhance the ''prairie wetland'' function by returning these areas to a more natural seral stage, and will not otherwise implicate the WC provisions. For sites where cropping is allowed to resume, cropping history will be verified using official USDA records, or in cases where records are not available, photographic evidence or other documentation.

CMW #2—Removal of Scattered Woody Vegetation, Including Stumps

USDA determined that based on past functional assessments, the removal of scattered woody vegetation, including stumps, from farmed, hayed, or grazed wetlands will have minimal effect on wetland functions and values, as long as the criteria for obtaining the exemption from ineligibility are followed. CMW #2 will apply to the removal of vegetation and stumps in wetlands that have already been significantly degraded, and are farmed, hayed, or grazed. This CMW shall only apply if woody vegetation is scattered within the wetland and comprises less than 5 percent canopy cover, when measured vertically on the subject portion of the wetland to be cleared. It shall not apply to any forested wetlands that were logged within 3 years previous to conducting the categorical minimal effect determinations, where such areas comprised trees 20 feet or taller that composed 30 percent or more of the dominant vegetation. These wetlands typically have reduced functions and values because of previous manipulation. Because of tree size, farmers will use other than normal farming operations to remove the trees and stumps, and the removal will generally be by mechanical means, such as bulldozers or trackhoes.

However, chemicals could also be used. USDA believes the direct impact will be the removal of scattered trees and stumps, along with the possibility of more tillage. Other impacts may include minor changes to wildlife and fish habitat, possible small changes in precipitation run-off, and removal of some invasive woody species.

CMW #3—Installation of Grassed Waterways for Erosion Control on non-Highly Erodible Croplands

USDA determined that this activity is carried out to control erosion in concentrated flow wetland areas, located in or between non-highly erodible fields. USDA determined that the direct impacts include short-term construction disturbance, decrease in erosion and sediment delivery, improvement in run-off water quality, and possibly some loss of degraded wetlands. USDA believes that the impacts to wildlife and fish habitat should be positive, since eroding areas will be permanently revegetated to native or other approved species. Based on past functional assessments, USDA determined that the installation of grassed waterways in these wetlands will have minimal effect on wetland functions and values, as long as all conditions as set forth in the proposed rule are met.

CMW #4—Terrace Construction for Erosion Control on Erodible Cropland

Since this activity may result in the manipulation of wetlands, a person could violate the wetland conservation provisions. Typically, these wetlands have already been altered in the past. USDA determined that the direct impacts include control of erosion, reduction of sediment moving off-site, and improvement of water quality. Other impacts may include partial diversion of runoff waters from wetlands located down slope from the activity. USDA has consistently found that impacts to wildlife and fisheries habitat will be minimal, since most of these areas are already in cropland. However, the activity may result in placement of fill within wetlands. Based on past functional assessments, USDA determined that the installation of terraces through these wetlands will have minimal effect on wetland functions and values, as long as all conditions set forth in the proposed rule are met.

CMW #5—Control or Removal of Exotic Invasive Woody Species, Including Stumps

USDA determined that the species listed under this CMW are either invasive or exotic, and generally have a negative environmental impact on wetland ecology. Most of these species colonize wetlands after some earlier disturbance has taken place. In many areas, the species invade the wetland and riparian zones, some of the most important and limited wildlife habitat. These species do not replace the habitat value of native vegetative species. In addition, the exotic species have minimal value for erosion control and bank stabilization, and may contribute to water quality and quantity problems.

The CMW provides that no additional alterations to the hydric conditions are allowed. USDA determined that these wetlands would function at an equal or higher level after the removal of the exotic invasive species, and when the wetland is being managed according to the criteria in the proposed rule. In addition, USDA believes indirect impacts from removal of these exotic species are positive because of protection from invasion to adjacent natural areas. Impacts to wildlife and fish habitat should be positive, since invasive, noxious vegetative species will be removed.

Some of these wetlands have been previously converted back to cropland or pastureland, with the approval of the Corps of Engineers, Fish and Wildlife Service, and NRCS. Based on assessment of these conversions, USDA determined that the removal of the species listed would have minimal effect on wetland functions and values, as long as all criteria are followed.

Mandatory Conditions of Exemption Eligibility

The proposed CMW exemptions are required by statute to provide farmers, ranchers and other landowners with needed flexibility to perform routine land maintenance on cropland and pastureland in a manner that will result in only minimal impacts to wetland functions. During the development of each CMW, specific conditional requirements were incorporated, which must be rigidly adhered to for an exemption to apply. These conditions will result in the safeguarding of threatened and endangered species habitat, protection of adjacent wetlands, streams and water bodies, enhancement of bio-diversity for native wetland flora, and assure exemption-related activities are implemented according to science-based standards and specifications. Of

the five proposed CMWs, No.'s 1, 2, 3 and 4 may only be used where farmed wetlands and farmed wetland pastures occur. These landuse wetlands have been previously and significantly degraded through normal agricultural activities such as annual tillage, haying or grazing. Additionally, many of the activities associated with the application of CMWs will result in direct benefits to wetlands, fish and wildlife habitat, and water quality. For example, CMW # 5 will allow the removal of exotic, invasive woody plants that have invaded wetlands and riparian zones. CMWs No.'s 3 and 4 will result in improved water quality by reducing erosion and sediment delivery to downstream wetlands, streams and tributaries.

Since each CMW was developed by incorporating numerous, mandatory restrictive conditions that should result in only limited impacts to wetland ecosystems, NRCS believes there is no need for the application of additional acreage limitations such as the one-half acre limitation used by the Corps for implementing nationwide permits under section 404 of the Clean Water Act. However, in order to enhance programmatic consistency between all other Federal, state and local wetland protection laws and the 1985 Act, NRCS is specifically soliciting comments from the public regarding possible acreage limitations for any or all of the CMWs.

Continued Coordination With Other Federal Agencies

Consistent with the intent expressed in the preamble to the current interim final rule (**Federal Register** Volume #61, Number 174), the changes proposed in this rule ''do not supersede the wetland protection authorities and responsibilities of the Environmental Protection Agency (EPA) or the Corps of Engineers (COE) under section 404 of the Clean Water Act.'' This proposed rule is promulgated under the authority of the 1985 Act, as amended, and therefore, does not affect the obligations of any person under other Federal statutes, or the legal authorities of any other Federal agency including, for example, EPA's authority to determine the geographic scope of Clean Water Act jurisdiction. Nonetheless, NRCS, the COE and EPA place a high priority on adopting procedures and policies that minimize duplication and inconsistencies between the wetland conservation provisions of the 1985 Act and the Clean Water Act section 404 programs. Any one who wishes to utilize the CMWs described in this proposed rule is advised to contact the local COE and State officials to ensure that activities meet any compliance requirements. Further, anyone wishing to come within the coverage of any of the CMWs must ensure that actions comply with all of the conditions set forth for the particular CMW.

List of Subjects in 7 CFR Part 12

Administrative practices and procedures, Wetlands.

PART 12—[AMENDED]

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.31 is amended by a new paragraph (e)(5) to read as follows:

§ 12.31 On-site wetland identification criteria.

* * * * *

(e) * * *

(5) Specific categorical minimal effect exemptions:

(i) Categorical minimal effect exemptions (CMWs) are those actions that have, individually and in connection with all other similar actions authorized by the Secretary in the area, a minimal effect on the functional hydrological and biological value of the wetlands in the area, including the value to waterfowl and wildlife. Both the hydrogeomorphic wetland classification system and the 1996 Act wetland determination labels identify the wetland types eligible for use with each CMW.

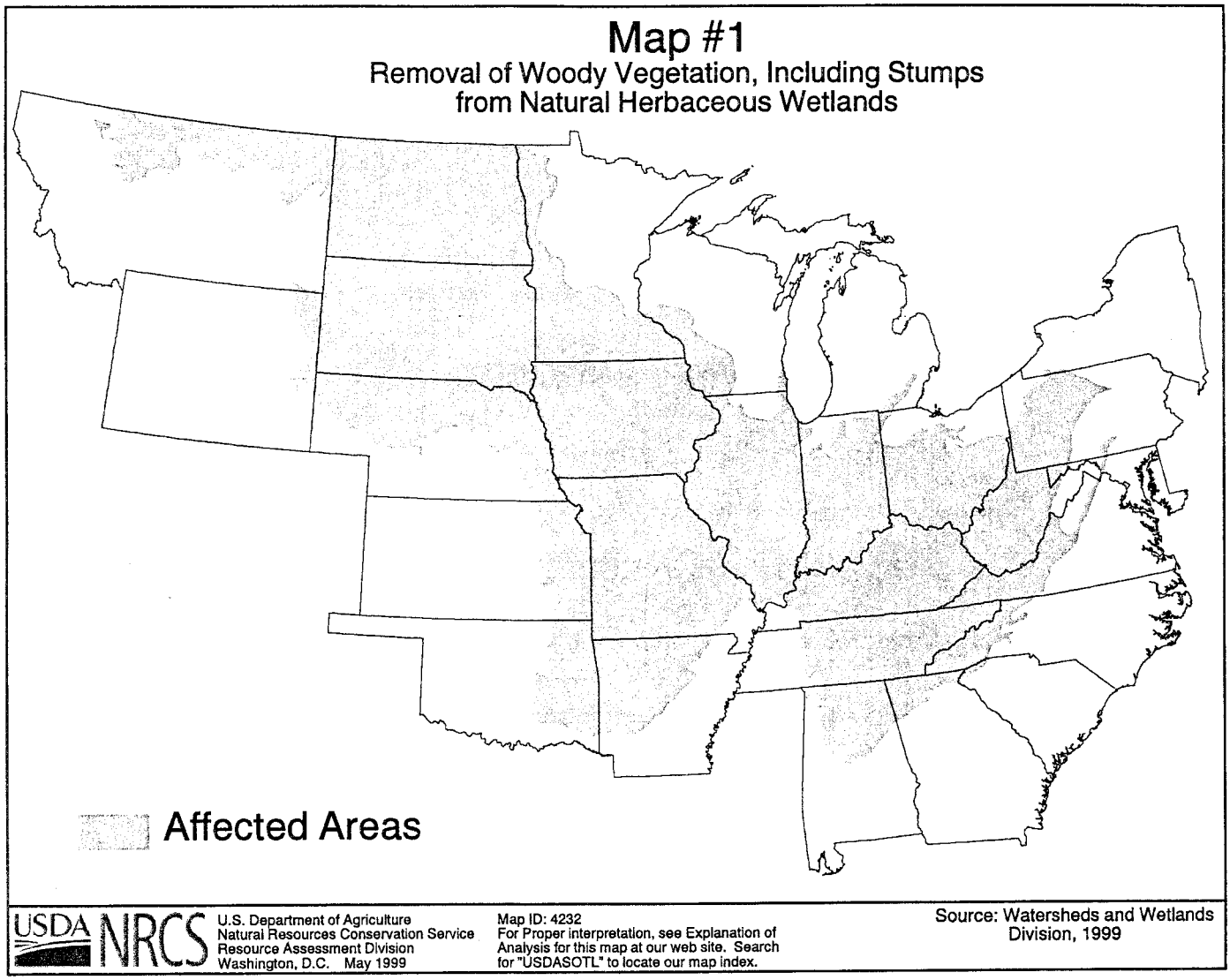
(ii) When participating in certain USDA programs, it is the person's responsibility to comply with applicable statutes and regulations. Caution should be exercised when manipulating or converting wetlands, to ensure that the actions taken meet the requirements of this part, including the specific conditions for an applicable CMW, in order to be in compliance with this part.

(iii) CMW #1—Removal of woody vegetation, including stumps from natural herbaceous wetlands:

(A) *Purpose.* CMW # 1 allows clearing of wetland areas that developed under native prairie vegetation, but have been invaded by woody vegetation.

(B) *1996 Act trigger.* The removal of woody vegetation (trees and stumps) makes possible the production of an agricultural commodity.

(C) *Scope.* CMW #1 shall only be applicable to the following land resource regions and Major Land Resource Areas (MLRAs): M, N, F, and G (58C & D, 60A, 61, 62, 63A and B, 64, 65, and 66). See Map #1.



(D) *Wetland types.* CMW #1 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as depressions, lacustrine fringe, riverine, or slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility.* The removal of the woody vegetation from the natural herbaceous wetlands must:

(*1*) Disturb only the soil necessary to complete the activity;

(*2*) Result in woody materials not being placed in waters of the United States;

(*3*) Not encompass greater than ½ acre of manipulation of woody vegetation per Farm Tract.

(4) Be on soils that formed under mid and tall grass prairie conditions;

(*5*) Not be cropped unless the majority of the manipulated portion of the wetland has a cropping history; and

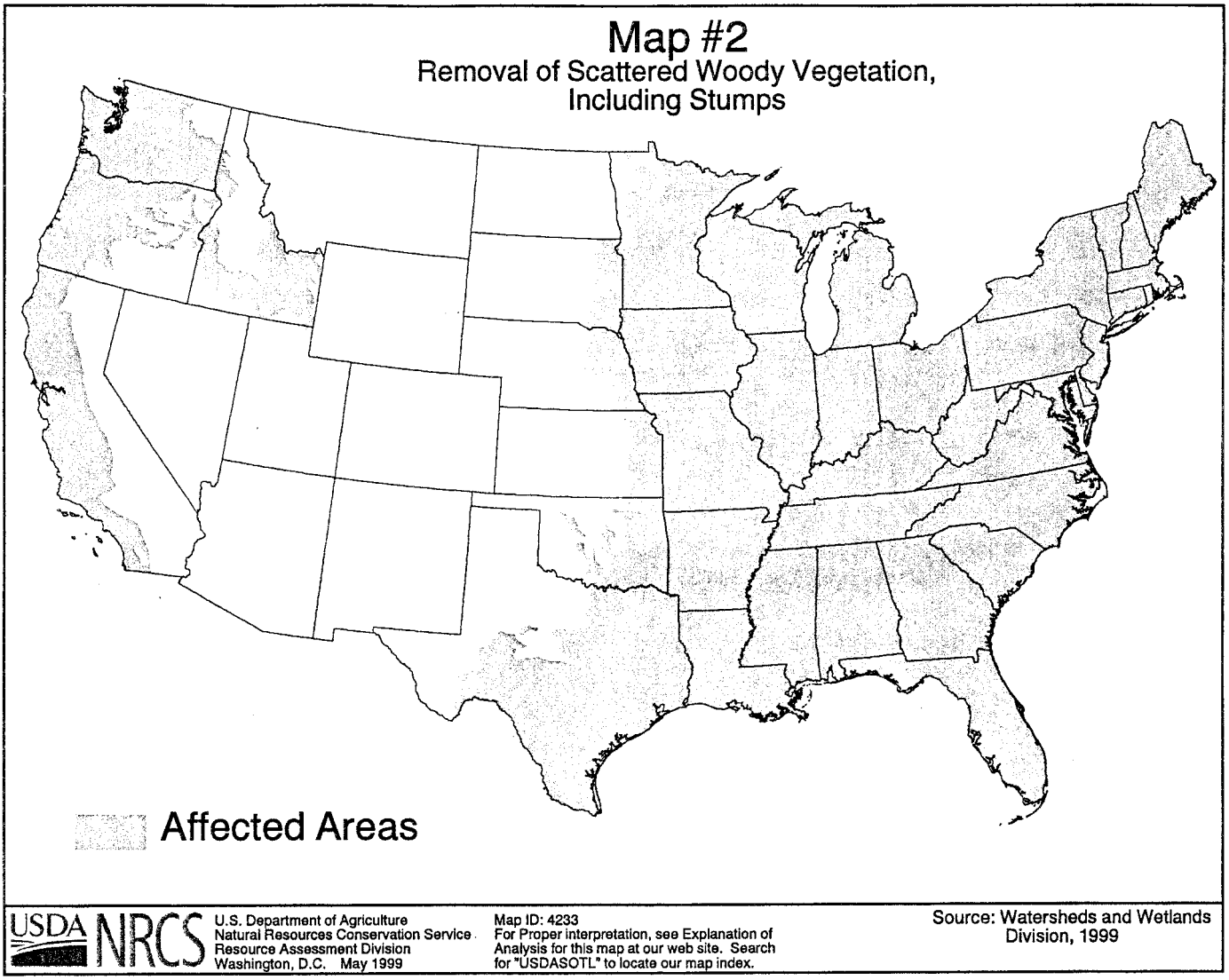
(*6*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(iv) CMW #2—Removal of scattered woody vegetation, including stumps:

(A) *Purpose.* CMW # 2 allows clearing of scattered woody vegetation in wetland areas that have previously been manipulated and are currently cropped, hayed, or grazed.

(B) *1996 Act trigger.* The removal of scattered woody vegetation and stumps from a wetland through means other than normal tillage operations.

(C) *Scope.* CMW #2 shall only be applicable to the following land resource regions and MLRAs: A, B, C, I, J, K, L, M, N, O, P, R, S, T, and U. See Map #2.



(D) *Wetland types.* CMW #2 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as depressions, lacustrine fringe, mineral soil flats, organic soil flats, riverine, or slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility.* The removal of scattered woody vegetation, including stumps must:

(*1*) Result in the stems and stumps not being placed in a waters of the United States;

(*2*) Be on wetland areas currently cropped, grazed or hayed;

(*3*) Disturb only the minimum area and soil necessary to complete the stem and stump removal;

(*4*) Be on areas where the woody vegetation is scattered, not clustered, and where woody vegetation comprises less than 5 percent canopy cover within the wetland, when measured vertically.

(*5*) Ensure that woody vegetation will be maintained adjacent to streams and water bodies at the minimum width as found in the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office;

(*6*) Be by means other than normal tillage operations;

(*7*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat; and

(*8*) Be used on other than clumps of woody vegetation.

(F) *Additional criteria.* Must not be on areas that have been logged within 3 years prior to conducting the categorical minimal effects determination, on sights where woody vegetation comprised of trees, 20 feet or taller that composed 30 percent or more of the dominant vegetation.

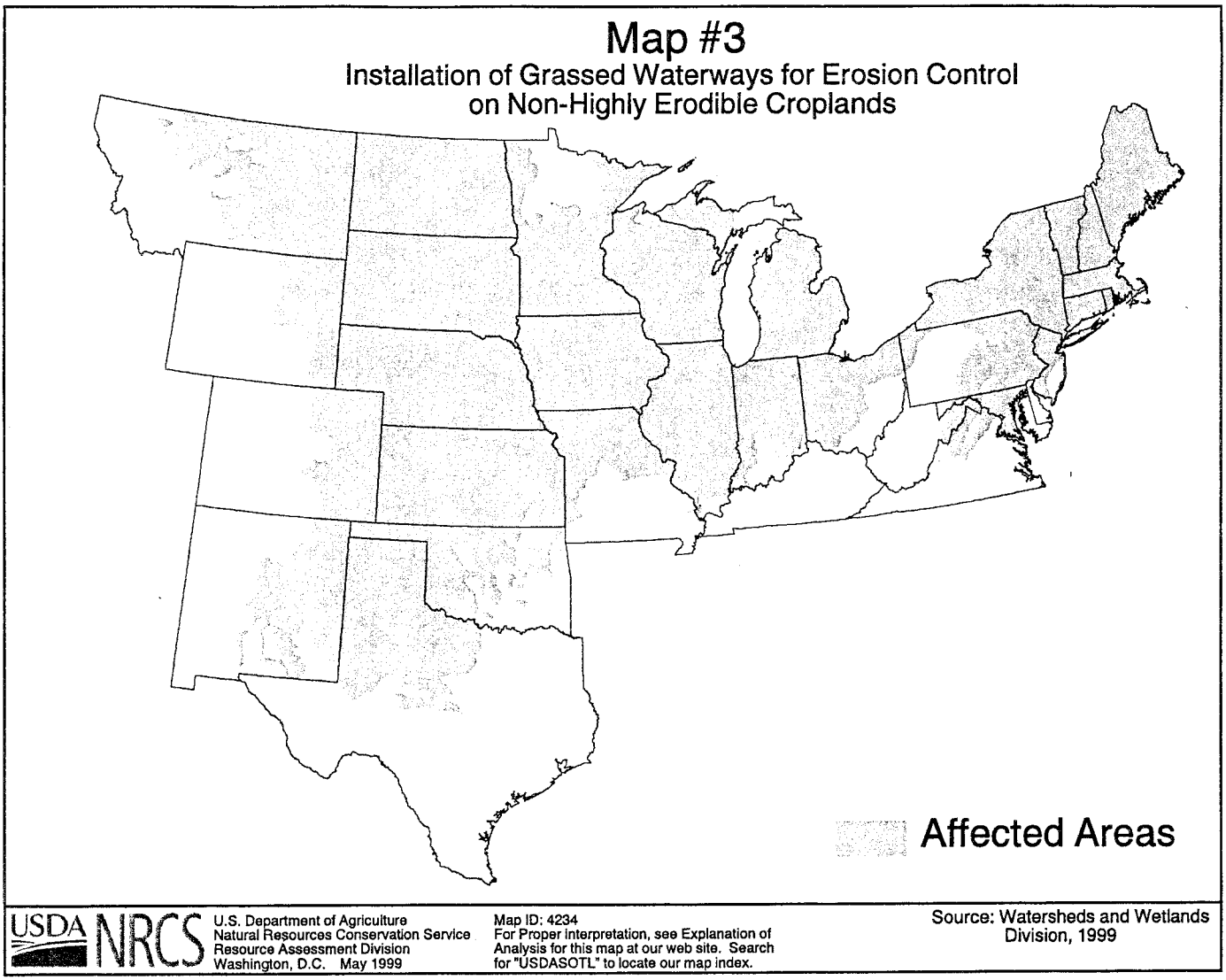
(v) CMW #3—Installation of grassed waterways for erosion control on non-highly erodible croplands:

(A) *Purpose.* CMW #3 allows grading, shaping, and revegetating areas for grassed waterways installation in or between non-highly erodible croplands to convey run-off water without causing erosion. In some instances, construction may include installation of non-perforated drainage tile in the grassed waterway, to convey water causing drainage area erosion.

(B) *1996 Act trigger.* The installation of a grassed waterway has the potential of converting adjacent wetland areas and making possible the production of an agricultural commodity. Additionally, the grading and shaping of the wetland for a grassed waterway may make the graded and shaped area capable of producing an agricultural commodity.

(C) *Scope.* CMW #3 shall be available in the following land resource regions

and MLRA(s): F, G, H, K (90, 91, 93, 94A), L, M, R, S. See Map #3.



(D) *Wetland types.* CMW #3 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility.* The installation of grassed waterways must:

(*1*) Be only on drainageways carrying concentrated flow when needed to control gully erosion, or when the waterway is aggrading;

(*2*) Be designed and constructed in accordance with NRCS Field Office Technical Guide (FOTG) standard, which may be obtained at any local NRCS office;

(*3*) Not include the installation of perforated drainage tile within the waterway area;

(*4*) Not adversely affect adjacent wetlands;

(*5*) Not allow the waterway itself to be used for annual cropping;

(*6*) Not allow dredge or fill material to be placed in waters of the United States;

(*7*) Not allow the construction of a grass waterway through or otherwise convert depressional wetlands that occur along the waterway; and

(*8*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(F) *Additional criteria.*

(*1*) CMW #3 does not apply to wooded areas.

(*2*) The constructed waterway cannot reduce the size of the pre-construction permanently vegetated area by more than 10 percent.

(*3*) The waterway, once constructed, must be revegetated to an approved native or introduced seed mixture suitable for the site and accommodating wildlife needs whenever possible.

(*4*) The operation and management of the grassed waterway, including mowing or grazing of the waterway, must be in accordance with the NRCS standards and restrictions for grassed waterways as found in the FOTG, which may be obtained at any local NRCS office.

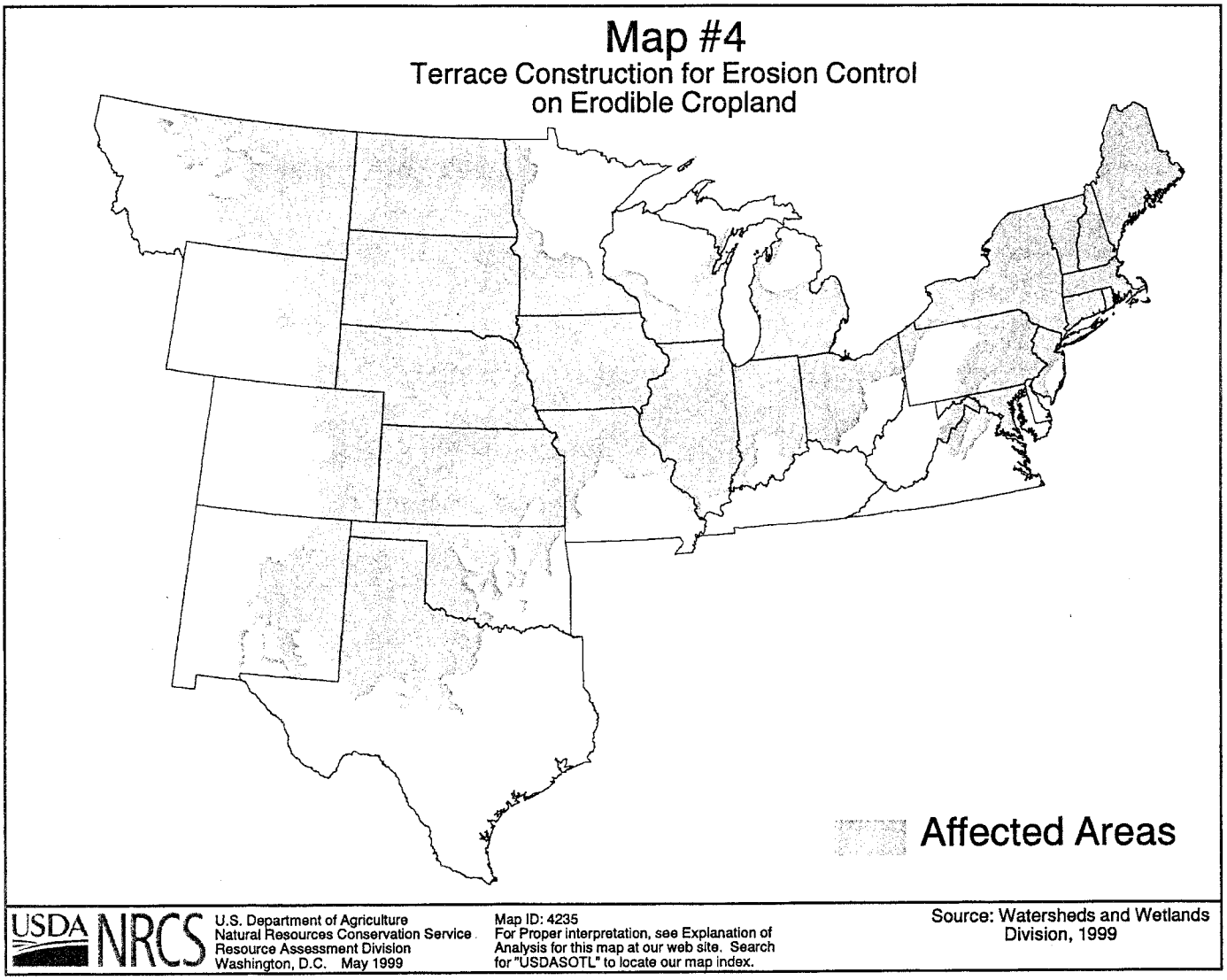
(vi) CMW #4—Terrace construction for erosion control on erodible cropland:

(A) *Purpose.* CMW #4 allows terrace construction for erosion control on erodible cropland.

(B) *1996 Act trigger.* This may be completed for the purpose of, or to make possible, the production of an

agricultural commodity by either manipulating a wetland in the field or by altering the hydrology of adjacent or downslope wetlands.

(C) *Scope.* CMW #4 shall be available only in the following land resource regions and MLRA(s): F, G, H, L, M, R, and S. See Map #4.



(D) *Wetland types.* CMW #4 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as sloped wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility.* The terrace construction must:

(*1*) Be carried out only for the purpose of erosion control in fields where the erosion rate is greater than the tolerable ''T'' soil erosion rate, as identified in the NRCS Field Office Technical Guide;

(*2*) Be built with a non-erosive outlet, and according to practice standards in the NRCS Field Office Technical Guide, which may be obtained at any local NRCS office;

(*3*) Be drained with non-perforated tile if underground outlets for terraces are installed;

(*4*) Be designed to minimize adverse impacts to adjacent or downslope (not in the terraced field) wetlands;

(*5*) Precipitation run-off normally entering a down slope wetland should be maintained such that the wetland hydrological conditions are similar to pre-construction conditions;

(*6*) Be completed no closer to any off-site wetland, than the distance of one terrace spacing, according to NRCS Field Office Technical Guide; and

(*7*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(vii) CMW #5—Control or removal of exotic and/or invasive woody species, including stumps:

(A) *Purpose.* CMW #5 allows the removal of the following species: Australian pine (Casuarina equisetifolia), Brazilian pepper (Schinus terebinthifolius), Common chinaberry (Melia azedarach), Chinese tallowtree (Sapium sebiferum), melaleuca (Melaleuca quinquenervia), Russian olive (Elaeagnus augustiflora), and Saltcedar (Tamarix gallica).

(B) *1996 Act trigger.* The removal of stems, stumps, and roots of woody, invasive or exotic species by mechanical operations may make possible the production of an agricultural commodity.

(C) *Scope.* CMW #5 shall only be available in the land resource regions and MLRA(s) for the particular species as described in paragraph (f)(5) of this section.

(D) *Wetland types.* CMW #5 may be used on any wetland type, including all wetlands identified under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility:*

(*1*) The control or removal of Chinese tallowtree in MLRA 150A & B, 151, and 152B (Map #5) must:

(*i*) Be carried out only on prairie soils;

(*ii*) Be on areas where the existing woody canopy is 80 percent or more in tallowtree cover;

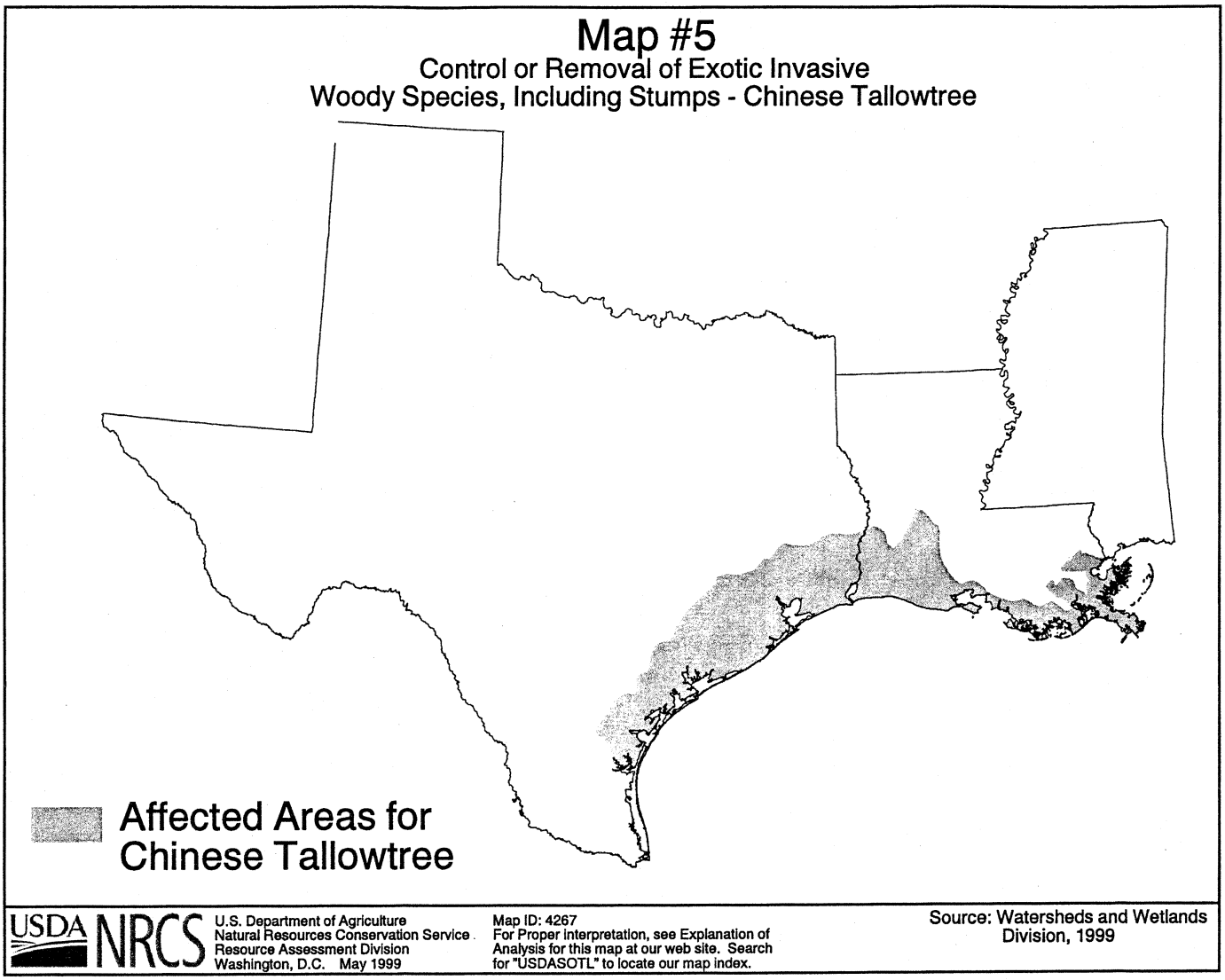
(*iii*) Limit the soil disturbance to the minimum necessary to complete activity;

(*iv*) Not remove any native woody species greater than 10 inches in diameter at breast height (dbh);

(*v*) Provide that materials removed are not disposed of in waters of the United States;

(*vi*) Maintain native woody vegetation adjacent to streams and water bodies at minimum widths in accordance with the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vii*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



(*2*) The control or removal of Australian pine, Brazilian pepper, Common chinaberry, Chinese tallowtree, and Melaleuca in MLRA 133A, 138, 152A, 153A, and Resource Region U (Map #6) must:

(*i*) Be on areas where the existing woody canopy is 50 percent or more of the invasive species alone, or in combination;

(*ii*) Be on areas that were previously farmed but are now considered abandoned;

(*iii*) Not include areas identified as prior converted cropland;

(*iv*) Provide that the management after removal of stems and stumps will include activities such as shallow water development, moist soil management, best management practices for water quality, and conservation practices for crop rotation;

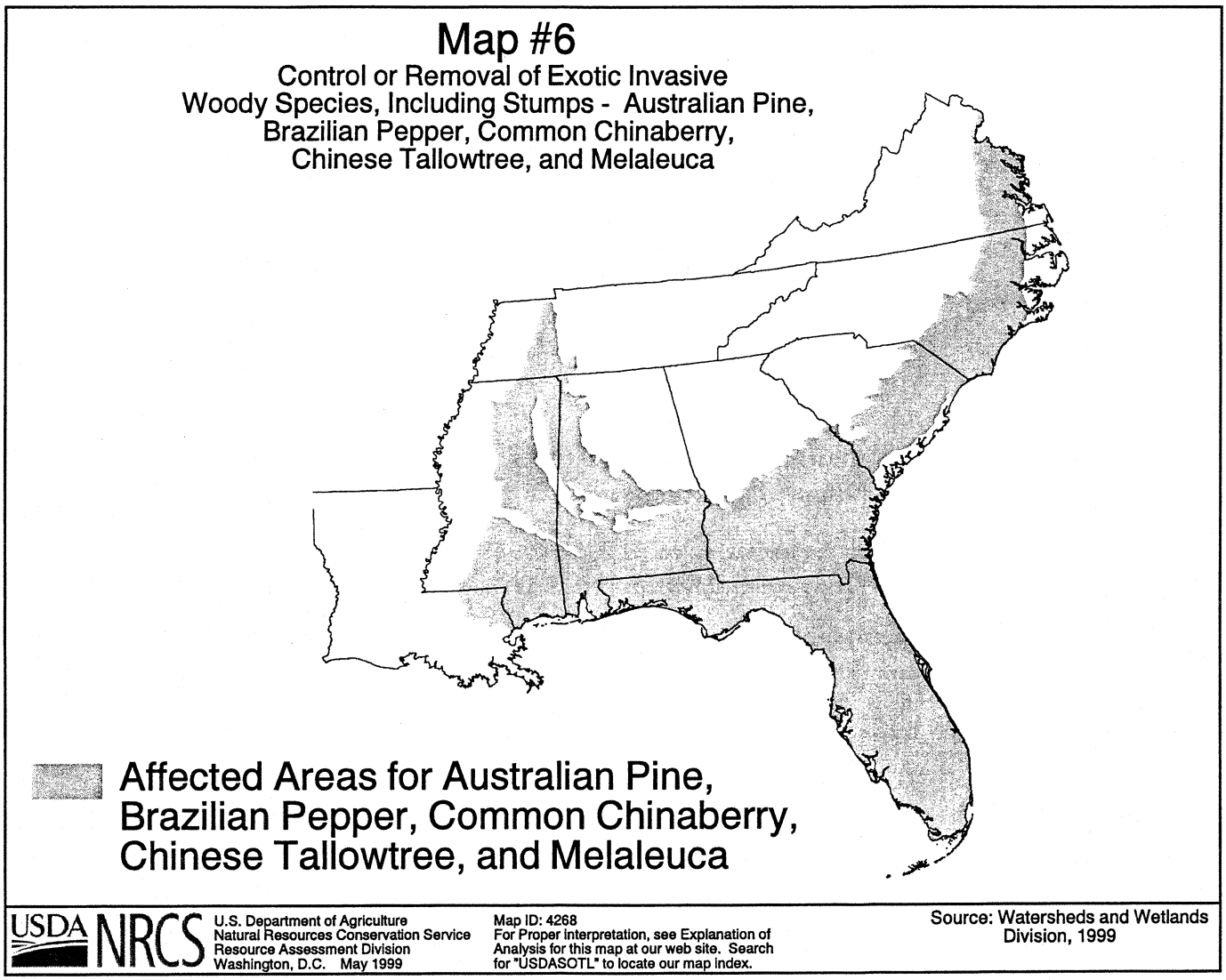
(*v*) Limit soil disturbance to the minimum necessary to complete activity;

(*vi*) Provide that materials removed are not disposed of in waters of the United States;

(*vii*) Prohibit cropping subsequent to removal of the invasive species if the area is historically wooded;

(*vii*) Maintain native woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer''; and

(*ix*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



(3) The control or removal of Saltcedar in Resource Regions C, D, E, F, G, H, and I (Map #7) must:

(*i*) Prohibit the removal of native woody species;

(*ii*) Limit soil disturbance to the minimum necessary to complete activity;

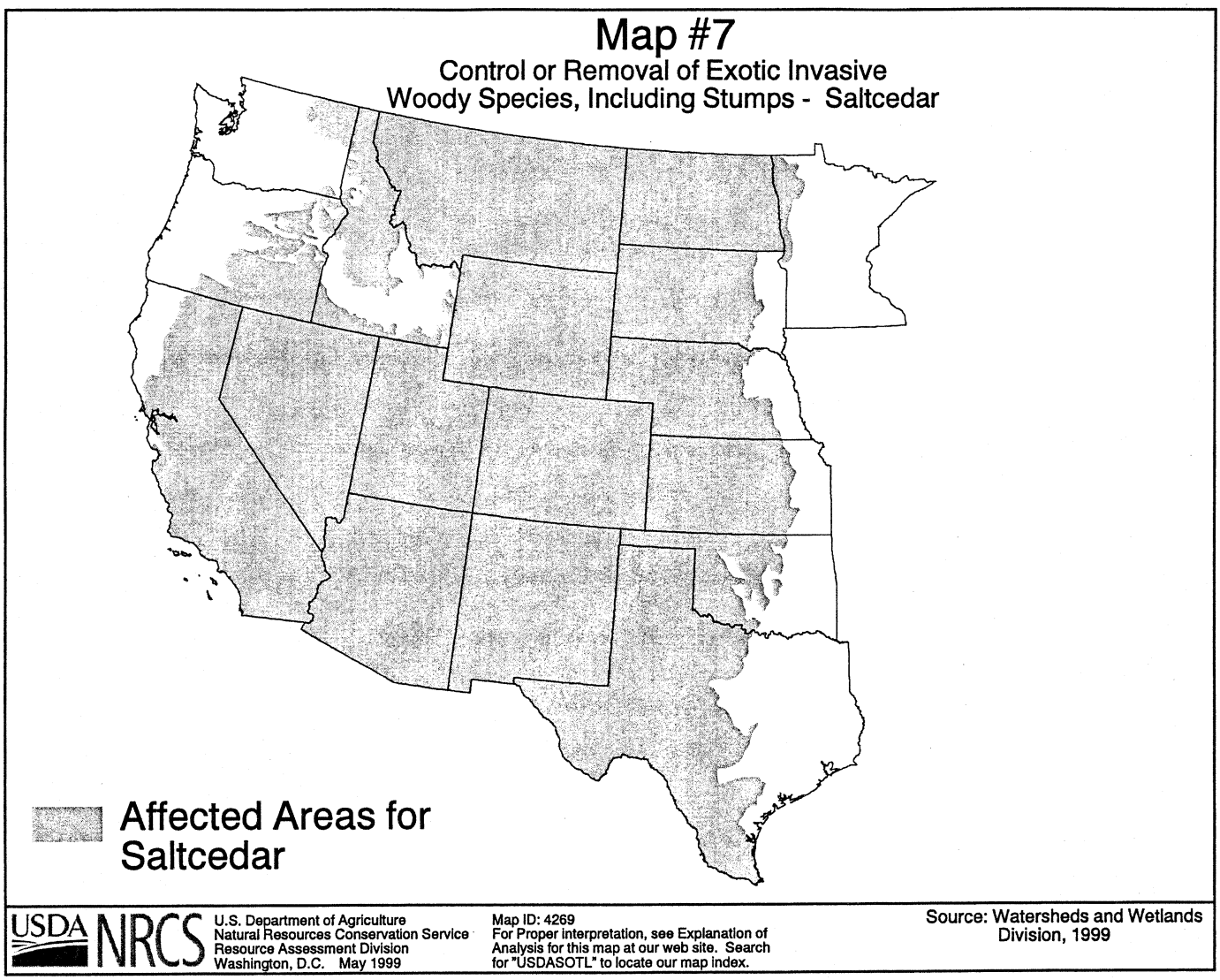
(*iii*) Prohibit cropping subsequent to the removal of the invasive species if the area is historically wooded;

(*iv*) Establish, to reduce re-invasion, permanent native herbaceous or woody cover if the area is not historically cropped;

(*v*) Provide that materials removed are not disposed of in waters of the United States;

(*vi*) Maintain woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vii*) Not be applied if the area is occupied by federally protected threatened and endangered species.



(*4*) The control or removal of Russian olive in Resource Regions A, B, C, D, E, F, G, H, I, J, K, and M (Map #8) must:

(*i*) Prohibit the removal of native woody species;

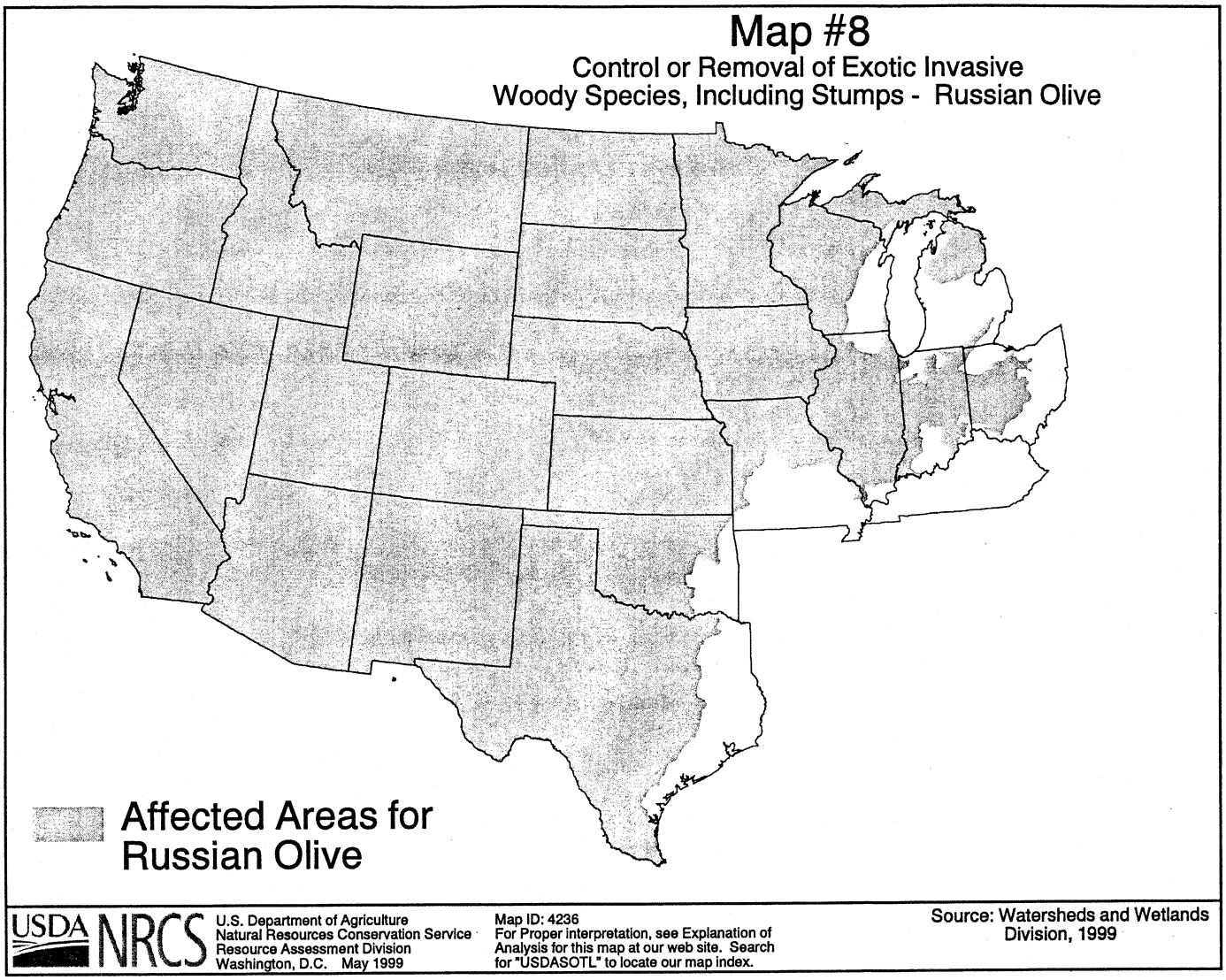
(*ii*) Limit soil disturbance to the minimum necessary to complete activity;

(*iii*) Prohibit cropping subsequent to the removal of the invasive species if area is historically wooded;

(*iv*) Provide that materials removed are not disposed of in waters of the United States; and

(*v*) Maintain woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the FOTG, NRCS Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vi*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



Signed at Washington, DC, on April 4, 2002.

Ann M. Veneman,

Secretary.

[FR Doc. 02–9700 Filed 4–22–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–3]

Proposed Revision of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Nuiqsut, AK. Two new Standard Instrument Approach Procedures (SIAP) have been established for the Nuiqsut Airport. The existing Class E airspace at Nuiqsut is insufficient to contain aircraft executing the new SIAPs. Adoption of this proposal would result in the addition and revision of Class E airspace at Nuiqsut, AK.

DATES: Comments must be received on or before June 7, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–3, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's home page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AAL–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register's** Web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Nuiqsut, AK. The intended effect of this proposal is to extend that Class E controlled airspace above 1,200 feet to enable IFR operations at Nuiqsut, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Nuiqsut Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway 4, original; (2) RNAV (GPS) Runway 22, original. The existing GPS Runway 4 and GPS Runway 22 SIAPs will be cancelled by this action. Intersections on existing airways have also been created to initiate transitions to the new SIAPs. The transitions require more airspace than currently exists to contain Instrument Flight Rules (IFR) aircraft.

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Nuiqsut Airport will not be affected by this action. That airspace extending upward from 1,200 feet above the surface will be revised and expanded if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth

* * * * *

AAL AK E5 Nuiqsut, AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′36″ N, long. 151°00′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Nuiqsut Airport, and that airspace extending upward from 1,200 feet above the surface from 13 miles north and 8 miles south of the 249° bearing from the airport to 29 miles southwest, to 19 miles northwest of the airport on the 314° bearing clockwise to the 352° bearing 13 miles north of the airport.

* * * * *

Issued in Anchorage, AK, on April 10, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–9847 Filed 4–22–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–2]

Proposed Revision of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Buckland, AK. Three new Standard Instrument Approach Procedures (SIAP) have been established for the Buckland Airport. The existing Class E airspace at Buckland is insufficient to contain aircraft executing the new SIAPs. Adoption of this proposal would result in the addition and revision of Class E airspace at Buckland, AK.

DATES: Comments must be received on or before June 7, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Operations Branch, AAL–530, Docket No. 02—AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's home page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02—AAL–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s Web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Buckland, AK. The intended effect of this proposal is to extend that Class E controlled airspace above 1,200 feet to enable IFR operations at Buckland, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed three new SIAPs for the Buckland Airport. The new approaches are (1) Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 10, original; (2) Non-directional Radio Beacon/Distance Measuring Equipment (NDB/DME) Runway 10, original; and (3) NDB/DME Runway 28, original. The existing GPS Runway 10 SIAP will be cancelled by this action. Intersections on existing airways have also been created to initiate transitions to the new SIAPs. The transitions require more airspace than currently exists to contain Instrument Flight Rules (IFR) aircraft.

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Buckland Airport will not be affected by this action. That airspace extending upward from 1,200 feet above the surface will be revised and expanded if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9J, Airspace Designations and Reporting Points, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Buckland, AK [Revised]

Buckland Airport, AK
(Lat. 65°58′56″N, long. 161°09′07″W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface from 65°28′30″N, 159°00′00″W to 65°57′45″N, 162°11′00″W to 66°16′00″N, 162°15′00″W to 66°40′00″N, 160°03′00″W to 66°35°00″N, 160°27′00″W to 66°11′00″N, 159°00′00″W to point of beginning.

* * * * *

Issued in Anchorage, AK, on April 10, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–9848 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Notice of certification of no significant impact under the Regulatory Flexibility Act; request for comments.

SUMMARY: The National Indian Gaming Commission (Commission) is reopening the comment period on our proposed revisions to the Minimum Internal Control Standards, 66 Fed. Reg. 66500 (December 26, 2001) for the limited purpose of giving small entities an opportunity to comment on the Commission's certification that the proposed revisions will not have a significant economic impact on them.

DATES: Comments must be received on or before May 23, 2002.

ADDRESSES: Mail comments to: Comments on Regulatory Flexibility Act on MICS, National Indian Gaming Commission, 1441 L St., NW, Suite 9100, Washington, D.C. 20005, Attn.: Michele F. Mitchell. Comments and requests may also be sent by facsimile to 202–632–7066.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell, at 202/632–7003 or, by fax, at 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Commission published proposed revisions to its existing Minimum Internal Control Standards on December 26, 2001. 66 FR 66500. The Commission received numerous comments on the proposed rule. As a result of one of the comments received, the Commission determined that certain Indian gaming operations, if they meet specific definitional criteria, may qualify as ''small entities,'' under the Regulatory Flexibility Act (RFA). 5 U.S.C. 601(3).

Section 603 of the RFA, requires agencies to prepare an analysis describing the impact of proposed rules on small entities. In the alternative, if an agency determines that its rule will not have a significant impact on a substantial number of small entities, it may certify to this determination and an analysis is not required. (5 U.S.C. 605(b)).

There are approximately 315 Indian gaming operations across the country. We estimate that approximately 100 of the operations have gross revenues of less than $5 million. Of these, approximately 50 operations have gross revenues of under $1 million. Since the proposed revisions will not apply to gaming operations with gross revenues under $1 million, only 50 small operations may be affected.

The proposed rule will not have a significant economic affect on these operations because gaming operations must have internal controls to protect their assets. The costs involved in implementing these controls are part of the regular business costs incurred by such an operation.

The Commission's regulations require tribes to adopt minimum standards, below which, the assets of the gaming operation would be placed at an unacceptable risk of loss. We believe that many Indian gaming operations have already implemented internal control standards which are more stringent than those contained in these regulations.

Under the proposed revisions, small gaming operations grossing under $1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between $1 and $5 million) are subject to the yearly requirement that independent certified public accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the tribe's minimum internal control standards. The cost of compliance with this requirement for a small gaming operation is estimated at between $3,000 and $5,000. The cost of this report is minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require a yearly independent financial audit that can be conducted at the same time. The results of the MICS audit are used by Commission and the tribes to measure compliance with the standards. For these reasons, the Commission has concluded that the proposed rule will not have a significant economic impact on those small entities subject to the rule.

If your gaming operation qualifies as a small entity and you would like to comment on the Commission's conclusions, please submit a comment explaining how and to what degree these proposed revisions affect you and the extent of the economic impact on your business. The Commission will consider any comments received prior to issuing a final rule. Comments addressing the substantive provisions of the proposed revisions to 25 CFR part 542 will not be considered at this time.

The Commission will provide this certification to the Chief Counsel for Advocacy of the Small Business Administration as required by 5 U.S.C. 605(b).

Dated: April 17, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–9861 Filed 4–22–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 54 and 602

[REG–136193–01]

RIN 1545–BA08

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirements of section 4980F of the Internal Revenue Code (Code) and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, which apply to defined benefit plans and to individual account plans that are subject to the funding standards of section 412 of the Code and section 302 of ERISA. These regulations provide guidance on the requirements for plan administrators to give notice of plan amendments to adversely affected plan participants and other parties when those amendments provide for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction in an early retirement benefit or retirement-type subsidy. These regulations will affect retirement plan sponsors and administrators, participants in and beneficiaries of retirement plans, and employee organizations representing retirement plan participants. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 22, 2002.

Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 15, 2002, at 10 a.m., must be received by July 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–136193–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–136193–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer at (202) 622–6090 or Diane S. Bloom at (202) 283–9888; concerning submissions, Donna Poindexter at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of Information should be received by June 24, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 54.4980F–1. Responses to this collection of information are required in order to obtain a benefit. Specifically, this information is required for a taxpayer who wants to amend a plan that is subject to the requirements of section 204(h) or section 4980F to significantly reduce the rate of future benefit accrual or significantly reduce an early retirement benefit or retirement-type subsidy. This information will be used to notify participants, alternate payees, and employee organizations of the amendment.

Estimated total annual reporting burden: 40,000 hours.

The estimated annual burden per respondent varies from one hour to 80 hours, depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 204(h) was added to ERISA by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986, Title XI of Public Law 99–272 (100 Stat. 237) and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2913) (TRA '86). As amended by TRA '86, section 204(h) of ERISA (section 204(h)) required a plan administrator to provide notice to participants and other interested persons after the date of adoption and at least 15 days before the effective date of a plan amendment providing for a significant reduction in the rate of future benefit accrual.

Pursuant to section 101(a) of Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury generally has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA, including section 204 of ERISA. Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury. On December 15, 1995, temporary regulations (TD 8631), under section 411 of the Internal Revenue Code (Code), 26 U.S.C. 411, were published in the **Federal Register** (60 FR 64320), along with a notice of proposed rulemaking cross-referencing the temporary regulations (60 FR 64401). Those temporary regulations addressed the notice requirements of section 204(h). On December 14, 1998, final regulations (TD 8795) addressing the notice requirements of section 204(h) were published in the **Federal Register**. See § 1.411(d)–6.

Section 659 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) (EGTRRA) added section 4980F of the Code, which imposes an excise tax when a plan administrator fails to provide timely notice of plan amendments that provide for a significant reduction in the rate of future benefit accrual, and, for this purpose, treats the elimination or

reduction of an early retirement benefit or retirement-type subsidy as a reduction in the rate of future benefit accrual. EGTRRA also amended section 204(h) to treat the elimination or reduction of an early retirement benefit or retirement-type subsidy as a reduction in the rate of future benefit accrual. The requirement in section 204(h)(1) that notice be given after the date of adoption and at least 15 days in advance of the amendment's effective date was replaced by a requirement contained in both section 4980F(e)(3) and section 204(h)(3) that, except as provided in regulations, the notice be provided within a ''reasonable time'' before the effective date of the amendment. The notice requirements in section 4980F of the Code are essentially identical to the notice requirements in section 204(h), as amended by EGTRRA. In addition, section 204(h) has been amended by EGTRRA to provide that, in the case of an egregious failure to meet the notice requirements, the provisions of the plan are applied as if the amendment entitled applicable individuals to the greater of the benefits to which they would have been entitled without regard to the amendment or the benefits under the plan as amended.

The Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21) included certain technical corrections to section 659 of EGTRRA.

These proposed regulations, when finalized, would replace the Treasury regulations currently at § 1.411(d)–6 to reflect the EGTRRA changes outlined above. Since the notice requirements of section 204(h) are now also required under section 4980F of the Code, these proposed regulations are issued under section 4980F, but apply for purposes of section 204(h), as well as for purposes of section 4980F.

Explanation of Provisions

Statutory Requirements After EGTRRA

Section 4980F(e) of the Code and section 204(h) of ERISA require notice to be provided when a defined benefit plan or a money purchase pension or other individual account plan that is subject to the funding standards of section 412 of the Code is amended to significantly reduce the rate of future benefit accrual. This notice must be provided to participants and alternate payees for whom the amendment is reasonably expected to significantly reduce the rate of future benefit accrual, and to employee organizations representing such participants. For purposes of these rules, an amendment that eliminates or reduces an early retirement benefit or retirement-type subsidy is treated as an amendment that reduces the rate of future benefit accrual. The notice must contain sufficient information (as determined in accordance with regulations) to enable such individuals to understand the effect of the amendment and, except to the extent provided in regulations, must be provided within a reasonable time before the effective date of the amendment. Additionally, section 4980F(e)(2) of the Code and section 204(h)(2) of ERISA authorize the Secretary to provide special rules for plans covering fewer than 100 participants and for plans that offer participants the option to choose between the new benefit formula and the old benefit formula.

A plan amendment that is subject to the notice requirements of section 4980F of the Code and section 204(h) of ERISA (section 204(h) amendment) may be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications (SMM) describing the amendment. Notice under section 4980F of the Code and section 204(h) of ERISA (referred to in the proposed regulations as section 204(h) notice) must be provided in accordance with the provisions of these regulations even though sections 102(a) and 104(b) of ERISA also may require that an SMM describing the plan amendment be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan. The Department of Labor has advised the IRS that, at least until the effective date of final regulations under section 4980F of the Code, a plan administrator that provides a section 204(h) notice to applicable individuals in accordance with these proposed regulations will be treated as having furnished those individuals with an SMM regarding the section 204(h) amendment. The plan administrator is required to satisfy any other requirements regarding the furnishing of SMMs or updated summary plan descriptions, including, for example, satisfaction of the requirement to furnish an SMM to any other participants covered under the plan, and to beneficiaries receiving benefits under the plan, who are entitled to an SMM regarding the amendment.

Time for Providing Section 204(h) Notice Under Proposed Regulations

The proposed regulations aim to strike a balance between giving participants and other affected parties section 204(h) notice long enough in advance to enable them to understand and consider the information before the amendment goes into effect, and allowing employers the ability to effect changes to their plans for business reasons (such as to facilitate business reorganizations or to permit small businesses the flexibility to reduce costs promptly) within a reasonable time. The Treasury Department and IRS have concluded, based on the history of the legislation, that the reason why the 15-day advance notice required under section 204(h) as it existed prior to EGTRRA was replaced by the ''reasonable time'' standard is because the 15-day standard was perceived as often being insufficient. Accordingly, these proposed regulations would provide that a reasonable time generally means at least 45 days before the effective date of the plan amendment.

However, the proposed regulations include certain special timing rules, including rules that would allow section 204(h) notice to be provided as late as 15 days before the effective date of the amendment in two types of cases. First, the proposed regulations would generally permit section 204(h) notice to be provided 15 days in advance for amendments adopted in connection with business mergers and acquisitions. Second, the proposed regulations include a 15-day advance notice requirement with respect to amendments of small plans. Thus, the 15-day standard that was in section 204(h) before EGTRRA would generally continue to apply for small plans and for amendments adopted in connection with business mergers and acquisitions for which notice would have been required under section 204(h) as in effect before EGTRRA. The proposed regulations provide an additional special timing rule that applies in the case of an amendment that is adopted in connection with a business merger or acquisition involving a plan-to-plan transfer or merger and that affects only an early retirement benefit or retirement-type subsidy (but does not reduce the rate of future benefit accrual). In the case of such an amendment, the notice must be provided no later than 30 days after the effective date of the amendment.

In the case of a plan amendment which offers participants the option to choose between the new benefit formula and the old benefit formula, the general timing rules would apply, except that the proposed regulations would allow certain additional information to be provided at a later date, as described in *Content of Section 204(h) Notice* of this preamble.

Content of Section 204(h) Notice

Section 4980F(e)(2) of the Code and section 204(h)(2) of ERISA require section 204(h) notice to be written in a manner calculated to be understood by the average plan participant and to provide sufficient information (as determined in accordance with regulations) to allow applicable individuals to understand ''the effect of'' the amendment.

The Conference report for EGTRRA states that the changes to the section 204(h) of ERISA notice requirements were expected to ''provide for alternative disclosures rather than a single disclosure methodology that may not fit all situations,'' and also notes ''the need to consider the complex actuarial calculations and assumptions involved in providing necessary disclosures.'' H.R. Rep. 107–84, at 266. In addition, particular concern was expressed about the effects of conversion of traditional defined benefit plans to cash balance or hybrid formula plans and the effects of ''wear-away'' provisions under which participants earn no additional benefits for a period of time after conversion. H.R. Rep. 107–84, at 266.

The content requirements in these proposed regulations take into account this background and generally seek to ensure that adversely affected participants receive sufficient information to enable them to understand the impact and magnitude of the changes being made to their pension plan, without imposing unduly burdensome requirements on employers and while permitting latitude to employers in diverse businesses with varying employee demographics to determine how to communicate plan changes in an appropriately effective manner. Accordingly, the proposed regulations provide general standards for the content of a section 204(h) notice, rather than containing specific requirements for each type of notice.

The proposed regulations require a section 204(h) notice to include sufficient information to allow applicable individuals to understand the effect of the plan amendment, including the approximate magnitude of the expected reduction. The type and amount of information necessary to satisfy this standard varies depending on the nature of the change resulting from the amendment. The information must be written in a manner calculated to be understood by the average plan participant. The notice must describe the affected provisions prior to plan amendment, describe these provisions as amended, and state the effective date of the amendment. This description of plan provisions might be similar to the description of a plan's benefit accrual formula in a summary plan description that satisfies the requirements under § 2520.102–3 of the Department of Labor regulations. If the amendment applies by its terms differently to various classes of employees (such as where the amendment applies differently depending on what division an employee is in), the explanation must include sufficient information to allow an affected participant to understand the general class or classes of participants to whom the reduction applies. Also, these proposed regulations clarify that, in cases in which a plan amendment affects different classes of applicable individuals differently, the plan administrator may provide different section 204(h) notices. A section 204(h) notice cannot include materially false or misleading information (or omit information so as to cause the information provided to be misleading).

If a section 204(h) amendment reduces an early retirement benefit or retirement-type subsidy merely as a result of reducing the rate of future benefit accrual, the section 204(h) notice need not contain a separate description of that reduction in the early retirement benefit or retirement-type subsidy.

Additional information may be necessary to make the approximate magnitude of the reduction apparent. In cases in which it is not reasonable to expect that the approximate magnitude of the reduction will be reasonably apparent from a narrative description, one or more illustrative examples are required to be included in the notice. Thus, for example, illustrative examples would be required for a change from a traditional defined benefit formula to a cash balance formula or a change that results in a period of time during which there are no accruals with regard to normal retirement benefits or an early retirement subsidy (a wear-away period). However, examples are not required to illustrate circumstances under which a participant's benefit may increase as a result of the section 204(h) amendment.

Where an amendment may result in reductions that vary in their impact on applicable individuals, the examples must show the approximate range of the reductions. However, the range of reductions need not include reductions that are likely to occur in only a de minimis number of cases if a narrative statement is included to that effect (for example, such a narrative might state that larger or smaller reductions may occur in some other cases) and examples are provided that show the approximate range of the reductions in cases other than this de minimis number. For amendments for which the maximum reduction occurs under identifiable circumstances with proportionately smaller reductions in other cases, the range of reductions can be illustrated by one example illustrating the maximum reduction, with a statement that smaller reductions also occur. Further, assuming that the reduction varies from small to large depending on service or other factors, as might occur for an amendment that results in a wear-away, two illustrative examples may be provided showing the smallest likely reduction and the largest likely reduction.

Examples are not required to be based on any particular form of payment (such as a life annuity or a single sum), but may be based on whatever form appropriately illustrates the reduction. The examples may be based on any reasonable assumptions, such as assumptions relating to age, service, and compensation (and salary scale assumptions for amendments that alter the compensation taken into account under the plan, such as a change from a final pay plan to a career average pay plan), but the section 204(h) notice must identify those assumptions. The proposed regulations include special rules for determining whether an amendment is reasonably expected to result in a wear-away period.

The proposed regulations include special rules for any case in which an applicable individual can choose between the new formula and the old formula. Under these rules, the individual must be provided sufficient information to enable the individual to make an informed choice between the new and old benefit formulas. The information to enable the individual to make an informed choice is not required to be provided at the same time as section 204(h) notice is otherwise required to be provided, as long as it is provided within a period that is reasonably contemporaneous with the individual's choice and that allows sufficient advance notice to enable the individual to understand and consider the additional information before making the choice.

A section 204(h) notice may include more information than is required, but cannot include any false or misleading information and cannot include so much additional information that the required information fails to be provided in a manner calculated to come to the attention of applicable individuals. While a notice for an amendment converting a traditional

final pay plan to a cash balance plan must include an estimate of the future normal retirement benefit of the participant in the illustration even if that requires an estimate of future wage increases, a section 204(h) notice could also include alternative estimates. For example, an alternative estimate could be based on an assumption that there are no future wage increases.

The proposed regulations include several examples, including examples that are intended to show the illustrations that are required for a cash balance conversion amendment that is a based on a very simplified form of conversion. For more complex conversion amendments, it is expected that more illustrations may be appropriate. However, these regulations do not require section 204(h) notice to include different illustrative examples to address the amount of the reduction for every demographic variation (e.g., differences in compensation or years of service).

Excise Tax Under Internal Revenue Code Section 4980F(c)(1)

Section 4980F(c)(1) of the Code provides that no excise tax is imposed on a failure for any period during which it is established to the satisfaction of the Secretary that the employer (or other person responsible for the tax) did not know that the failure existed and exercised reasonable diligence to meet the notice requirements. The proposed regulations provide that the requirements of section 4980F(c)(1) of the Code are satisfied if and only if the person that would be responsible for the tax exercised reasonable diligence in attempting to deliver timely section 204(h) notice to applicable individuals (by the latest date permitted under the regulations) and believed that section 204(h) notice was actually and timely delivered to each applicable individual. An example of this illustrates that section 4980F(c)(1) of the Code would apply to a situation in which a plan administrator relies on an overnight delivery service to send materials to the persons who are expected to hand deliver section 204(h) notice to participants, and the overnight delivery service is late in making that delivery.

ERISA Provisions Regarding Egregious Failures

Section 204(h)(6)(A) of ERISA, as amended by EGTRRA, provides that in the case of an egregious failure to meet the notice requirements, the provisions of the plan are applied as if the plan amendment entitled applicable individuals to the greater of the benefits to which they would have been entitled without regard to the amendment or the benefits under the plan as amended. Section 204(h)(6)(B) of ERISA provides that, for this purpose, there is an egregious failure to meet the section 204(h) notice requirements if such failure is within the control of the plan sponsor and is an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet notice requirements) or a failure to provide most of the individuals with most of the information they are entitled to receive. The proposed regulations provide that a failure is not egregious if the plan administrator reasonably determines, taking into account the statute, administrative guidance, and relevant facts and circumstances, that the reduction is not significant. The proposed regulations clarify that, in the case of a failure that is not egregious, the failure will not preclude the amendment from becoming effective. However, where there is a failure, whether or not egregious, recourse may be available under ERISA section 502 to, among other things, recover benefits due under the plan, enforce rights under the terms of the plan, clarify rights to future benefits under the plan, obtain equitable relief, or otherwise redress such violation. This might occur, for example, if a participant receives and thus uses materially inadequate or misleading information in making a choice between the new and the old benefit formula.

Method of Delivery of Section 204(h) Notice

As a general standard, the section 204(h) notice either must be provided through a method that results in actual receipt of the notice or the plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the method for providing the notice results in actual receipt. Therefore, section 204(h) notice may not be provided by ''posting.''

Section 4980F(g) of the Code and section 204(h)(7) of ERISA, as amended by EGTRRA, state that the Secretary of the Treasury may by regulation allow 204(h) notice to be provided using new technologies. Because those provisions specifically relate to electronic delivery and were enacted after enactment of the Electronic Signatures in Global and National Commerce Act (114 Stat. 464) (2000) (E-SIGN Act), the authority conferred by those provisions on the Secretary to decide whether to permit, and under what conditions to permit, electronic delivery of section 204(h) notice is not constrained by the provisions of the E–SIGN Act.

Section 4980F(g) of the Code and section 204(h)(7) of ERISA give the Secretary of the Treasury authority to impose appropriate criteria for the provision of section 204(h) notice through electronic methods to ensure that applicable individuals will receive section 204(h) notice electronically and are able to access it timely. As noted above, section 204(h) notice either must be provided through a method that results in actual receipt of the notice or the plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the method for providing the notice results in actual receipt. These proposed regulations would apply the same standard to the electronic delivery of section 204(h) notice by requiring that the method used result in actual receipt or that the plan administrator take appropriate and necessary measures to ensure that any provision of the notice in electronic format results in actual receipt of the transmitted information. Additionally, the plan administrator must offer to provide each applicable individual a paper version of the notice free of charge. Of course, the requirements of these regulations must otherwise be satisfied when section 204(h) notice is provided in electronic format. The proposed regulations include a number of examples illustrating the rules applicable to the electronic provision of a section 204(h) notice and also include a safe harbor, which has conditions similar to the consumer protection provisions of section 101(c) of the E–SIGN Act.

Under the proposed regulations, permitted electronic means for furnishing section 204(h) notice would include e-mail, a site on the Internet, or other electronic communications site, and a DVD or CD that could generally be accessed using a computer at an employee's worksite. However, section 204(h) notice information is not considered provided merely because it is available through a computer kiosk, even when the kiosk is at the individual's workplace and the individual is otherwise provided notice of the availability of information at the kiosk, because, like posting, providing such information through a kiosk places a burden on participants to seek out the information. Nevertheless, information made available through a kiosk is considered provided to those applicable individuals who actually access the information through the kiosk.

Proposed Effective Date

These proposed regulations would apply to amendments that go into effect on or after the date that is 120 days after publication of final regulations in the **Federal Register**. The proposed regulations also restate the general statutory effective date and special effective date rules that are in section 659(c) of EGTRRA. Thus, the proposed regulations include the transition rule of section 659(c)(2) of EGTRRA that provides that, for amendments taking effect on or after the date of enactment of EGTRRA (June 7, 2001) and prior to the effective date of the final regulations, the notice requirements of section 4980F(e)(2) and (3) of the Code, and of section 204(h) of ERISA as amended by EGTRRA, are treated as satisfied if the plan administrator makes a reasonable, good faith effort to comply with those requirements.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that small entities generally do not have very complex benefit structures in their plans, or many different classes of participants who will be differently affected by an amendment reducing the rate of future benefit accrual. Small entities also have fewer employees, and so those small entities that are required to provide section 204(h) notice need to provide it to fewer individuals. Accordingly, the time required for them to prepare and provide section 204(h) notice will usually be modest. Furthermore, because most small entities will only be affected when they amend the retirement plans they sponsor to reduce or eliminate benefits, and most small entities will not so amend the retirement plans frequently, it is generally expected that most small entities would be required to provide section 204(h) notice only once over the course of several years. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 15, 2002, beginning at 10 a.m., in the IRS Auditorium, Seventh Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by June 18, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Janet A. Laufer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 54 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.411(d)(6) [Removed]

Par. 2. Section 1.411(d)–6 is removed

PART 54—PENSION EXCISE TAXES

Par. 3. The authority citation for part 54 is amended by adding the following citation in numerical order to read as follows:

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

§ 54.4980F–1 is also issued under 26 U.S.C. 4980. * * *

Par.4. Section 54.4980F–1 is added to read as follows:

§ 54.4980F–1 Notice requirements for certain pension plan amendments significantly reducing benefit accruals.

(a) *Table of contents.* This paragraph contains a list of the questions in § 54.4980F–1(b).

Q–1. What are the notice requirements of section 4980F(e) of the Internal Revenue Code and section 204(h) of ERISA?

Q–2. What are the differences between section 4980F and section 204(h)?

Q–3. What is an ''applicable pension plan'' to which section 4980F of the Internal Revenue Code and section 204(h) apply?

Q–4. What is ''section 204(h) notice'' and what is a ''section 204(h) amendment''?

Q–5. For which amendments is section 204(h) notice required?

Q–6. What is an amendment that reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy for purposes of determining whether section 204(h) notice is required?

Q–7. What plan provisions are taken into account in determining whether an amendment is a section 204(h) amendment?

Q–8. What is the basic principle used in determining whether a reduction in the rate of future benefit accrual or an early retirement benefit or retirement-type subsidy is significant for purposes of section 204(h)?

Q–9. When must section 204(h) notice be provided?

Q–10. To whom must section 204(h) notice be provided?

Q–11. What information is required to be provided in a section 204(h) notice?

Q–12. What special rules apply if participants can choose between the old and new benefit formulas?
Q–13. How may section 204(h) notice be provided?
Q–14. What are the consequences if a plan administrator fails to provide section 204(h) notice?
Q–15. What are some of the rules that apply with respect to the excise tax under section 4980F?
Q–16. How do section 4980F and section 204(h) apply when a business is sold?
Q–17. How are amendments to cease accruals and terminate a plan treated under section 4980F and section 204(h)?
Q–18. What is the effective date of section 4980F of the Internal Revenue Code, section 204(h) of ERISA, as amended by EGTRRA, and these regulations?

(b) *Questions and answers.* The questions and answers are as follows:

Q–1. What are the notice requirements of section 4980F(e) of the Internal Revenue Code and section 204(h) of ERISA?

A–1. (a) *Requirements of Internal Revenue Code section 4980F(e) and ERISA section 204(h).* Section 4980F of the Internal Revenue Code (section 4980F) and section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h) (section 204(h)) each generally requires notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. The notice is required to be provided to plan participants or alternate payees who are applicable individuals (as defined in Q&A–10 of this section) and to certain employee organizations. The plan administrator must generally provide the notice before the effective date of the plan amendment. Q&A–9 of this section sets forth the time frames for providing notice, Q&A–11 of this section sets forth the content requirements for the notice, and Q&A–12 of this section contains special rules for cases in which participants can choose between the old and new benefit formulas.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q–2. What are the differences between section 4980F and section 204(h)?

A–2. Section 4980F was added to the Internal Revenue Code by the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) (2001) (EGTRRA). EGTRRA also amended section 204(h) to, among other things, extend the notice requirement to a plan amendment that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy, even if it does not significantly reduce the rate of future benefit accrual. The notice requirements of section 4980F generally are parallel to the notice requirements of section 204(h), as amended by EGTRRA. However, the consequences of the two provisions differ: section 4980F imposes an excise tax on a failure to satisfy the notice requirements, while section 204(h)(6), as amended by EGTRRA, contains a special rule with respect to egregious failures. See Q&A–14 and Q&A–15 of this section. Except to the extent specifically indicated, these regulations apply both to section 4980F and to section 204(h).

Q–3. What is an ''applicable pension plan'' to which section 4980F and section 204(h) apply?

A–3. (a) *In general.* Section 4980F and section 204(h) apply to an applicable pension plan. For purposes of section 4980F, an *applicable pension plan* means a defined benefit plan qualifying under section 401(a) or 403(a) of the Internal Revenue Code, or an individual account plan that is subject to the funding standards of section 412 of the Internal Revenue Code. For purposes of section 204(h), an *applicable pension plan* means a defined benefit plan that is subject to part 2 of subtitle B of title I of ERISA, or an individual account plan that is subject to such part 2 and to the funding standards of section 412 of the Internal Revenue Code. Accordingly, individual account plans that are not subject to the funding standards of section 412 of the Internal Revenue Code, such as profit-sharing and stock bonus plans, are not applicable pension plans to which section 4980F or section 204(h) apply. Similarly, a defined benefit plan that neither qualifies under section 401(a) or 403(a) of the Internal Revenue Code nor is subject to part 2 of subtitle B of title I of ERISA is not an applicable pension plan. Further, neither a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code), nor a church plan (within the meaning of section 414(e) of the Internal Revenue Code) with respect to which no election has been made under section 410(d) of the Internal Revenue Code is an applicable pension plan.

(b) *Section 204(h) notice not required for small plans covering no employees.* Section 204(h) notice is not required for a plan under which no employees are participants covered under the plan, as described in § 2510.3–3(b) of the Department of Labor regulations, and which has fewer than 100 participants.

Q–4. What is ''section 204(h) notice'' and what is a ''section 204(h) amendment''?

A–4. *Section 204(h) notice* is notice that complies with section 4980F(e), section 204(h)(1), and this section. A *section 204(h) amendment* is an amendment for which section 204(h) notice is required under this section.

Q–5. For which amendments is section 204(h) notice required?

A–5. (a) *Significant reduction in the rate of future benefit accrual.* Section 204(h) notice is required for an amendment to an applicable pension plan that provides for a significant reduction in the rate of future benefit accrual, including a cessation of benefit accrual.

(b) *Early retirement benefits and retirement-type subsidies.* Section 204(h) notice is required for an amendment to an applicable pension plan that provides for the significant reduction of an early retirement benefit or retirement-type subsidy. For purposes of this section, *early retirement benefit* and *retirement-type subsidy* mean early retirement benefits and retirement-type subsidies within the meaning of section 411(d)(6)(B)(i).

(c) *Elimination or cessation of benefits.* For purposes of this section, the terms *reduce* or *reduction* include *eliminate* or *cease* or *elimination* or *cessation.*

(d) *Delegation of authority to Commissioner.* The Commissioner may provide in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) or (b) of this Q&A–5 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–6. What is an amendment that reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy for purposes of determining whether section 204(h) notice is required?

A–6. (a) *In general.* For purposes of determining whether section 204(h) notice is required, an amendment reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy only as

provided in paragraph (b) or (c) of this Q&A–6.

(b) *Reduction in rate of future benefit accrual*—(1) *Defined benefit plans.* For purposes of section 4980F and section 204(h), an amendment to a defined benefit plan reduces the rate of future benefit accrual only if it is reasonably expected to reduce the amount of the future annual benefit commencing at normal retirement age for benefits accruing for a year. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with section 411(c)(3) of the Internal Revenue Code).

(2) *Individual account plans.* For purposes of section 4980F and section 204(h), an amendment to an individual account plan reduces the rate of future benefit accrual only if it is reasonably expected to reduce the amounts allocated in the future to participants' accounts for a year. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(3) *Determination of rate of future benefit accrual.* The rate of future benefit accrual for purposes of this paragraph (b) is determined without regard to optional forms of benefit within the meaning of § 1.411(d)–4, Q&A–1(b) of this chapter (other than the annual benefit described in paragraph (b)(1) of this Q&A–6). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e) of this chapter.

(c) *Reduction of early retirement benefits or retirement-type subsidies.* For purposes of section 4980F and section 204(h), an amendment reduces an early retirement benefit or retirement-type subsidy only if it is reasonably expected to eliminate or reduce an early retirement benefit or retirement-type subsidy.

Q–7. What plan provisions are taken into account in determining whether an amendment is a section 204(h) amendment?

A–7. (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual, early retirement benefits, or retirement-type subsidies of participants or alternate payees must be taken into account in determining whether an amendment is a section 204(h) amendment. For example, plan provisions that may affect the rate of future benefit accrual include the dollar amount or percentage of compensation on which benefit accruals are based; the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; in the case of a plan using permitted disparity under section 401(l) of the Internal Revenue Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l) of the Internal Revenue Code); and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i) of this chapter). Plan provisions that may affect early retirement benefits or retirement-type subsidies include the right to receive payment of benefits after severance from employment and before normal retirement age and actuarial factors used in determining optional forms for distribution of retirement benefits.

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. Further, any benefit that is not a section 411(d)(6) protected benefit as described in § 1.411(d)–4, Q&A–1(d) of this chapter, or that is a section 411(d)(6) protected benefit that may be eliminated or reduced as permitted under § 1.411(d)–4, Q&A–2(a) or (b) of this chapter, is not taken into account in determining whether an amendment is a section 204(h) amendment. Thus, for example, provisions relating to vesting schedules or the right to make after-tax contributions or elective deferrals are not taken into account.

(c) *Example.* The following example illustrates the rules in this Q&A–7:

Example. (i) *Facts.* A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which is 20. A plan amendment is adopted that changes the numerator or denominator of that fraction.

(ii) *Conclusion.* The plan amendment must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q–8. What is the basic principle used in determining whether a reduction in the rate of future benefit accrual or a reduction in an early retirement benefit or retirement-type subsidy is significant for purposes of section 204(h)?

A–8. (a) *General rule.* Whether an amendment reducing the rate of future benefit accrual or reducing an early retirement benefit or retirement-type subsidy provides for a reduction that is significant for purposes of section 204(h) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted.

(b) *Application for determining significant reduction in the rate of future benefit accrual.* For a defined benefit plan, the determination of whether an amendment provides for a significant reduction in the rate of future benefit accrual is made by comparing the amount of the annual benefit commencing at normal retirement age, as determined under Q&A–6(b)(1) of this section, under the terms of the plan as amended with the amount of the annual benefit commencing at normal retirement age, as determined under Q&A–6(b)(1) of this section, under the terms of the plan prior to amendment. For an individual account plan, the determination of whether an amendment provides for a significant reduction in the rate of future benefit accrual is made in accordance with Q&A–6(b)(2) of this section by comparing the amounts to be allocated in the future to participants' accounts under the terms of the plan as amended with the amounts to be allocated in the future to participants' accounts under the terms of the plan prior to amendment.

(c) *Application to certain amendments reducing early retirement benefits or retirement-type subsidies.* Because section 204(h) notice is required only for reductions that are significant, section 204(h) notice is not required for an amendment that reduces an early retirement benefit or retirement-type subsidy if the amendment is permitted under the third sentence of section 411(d)(6)(B) of the Internal Revenue Code and regulations thereunder (relating to the elimination

or reduction of benefits or subsidies which create significant burdens or complexities for the plan and plan participants unless the amendment adversely affects the rights of any participant in a more than de minimis manner).

Q–9. When must section 204(h) notice be provided?

A–9. (a) *45-day general rule.* Except as described in paragraphs (b) and (c) of this Q&A–9, section 204(h) notice must be provided at least 45 days before the effective date of any section 204(h) amendment. See paragraph (d) of this Q&A–9 for special rules for amendments permitting participant choice.

(b) *15-day rule for small plans.* Except for amendments described in paragraph (c)(2) of this Q&A–9, in the case of a small plan, section 204(h) notice must be at least 15 days before the effective date of any section 204(h) amendment. For purposes of this section, a small plan is a plan that the plan administrator reasonably expects to have, on the effective date of the section 204(h) amendment, fewer than 100 participants who have an accrued benefit under the plan.

(c) *Special timing rule for business transactions*—(1) *15-day rule for section 204(h) amendment in connection with an acquisition or disposition.* Except for amendments described in paragraph (c)(2) of this Q&A–9, if a section 204(h) amendment is adopted in connection with an acquisition or disposition, section 204(h) notice must be provided at least 15 days before the effective date of the section 204(h) amendment.

(2) *Later notice permitted for section 204(h) amendment significantly reducing early retirement benefit or retirement-type subsidies in connection with certain plan transfers, mergers, or consolidations.* If a section 204(h) amendment is adopted with respect to liabilities that are transferred to another plan in connection with a transfer, merger, or consolidation of assets or liabilities as described in section 414(l) of the Internal Revenue Code and § 1.414(l)–1 of this chapter, the amendment is adopted in connection with an acquisition or disposition, and the amendment significantly reduces an early retirement benefit or retirement-type subsidy, but does not significantly reduce the rate of future benefit accrual, then section 204(h) notice must be provided no later than 30 days after the effective date of the section 204(h) amendment.

(3) *Definition of acquisition or disposition.* For purposes of this paragraph (c), see § 1.410(b)–2(f) of this chapter for the definition of acquisition or disposition.

(d) *Timing rule for amendments permitting participant choice.* In general, section 204(h) notice of a section 204(h) amendment that provides applicable individuals with a choice between the old and the new benefit formulas (as described in Q&A–12 of this section) must be provided in accordance with the time period applicable under paragraphs (a) through (c) of this Q&A–9. See Q&A–12 of this section for additional guidance regarding section 204(h) notice in connection with participant choice.

Q–10. To whom must section 204(h) notice be provided?

A–10. (a) *In general.* Section 204(h) notice must be provided to each applicable individual and to each employee organization representing participants who are applicable individuals. A special rule is provided in paragraph (d) of this Q&A–10.

(b) *Applicable individual.* Applicable individual means each participant in the plan, and any alternate payee, whose rate of future benefit accrual under the plan is reasonably be expected to be significantly reduced, or for whom an early retirement benefit or retirement-type subsidy under the plan may reasonably be expected to be significantly reduced, by the section 204(h) amendment.

(c) *Alternate payee.* Alternate payee means a beneficiary who is an alternate payee (within the meaning of section 414(p)(8) of the Internal Revenue Code) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A) of the Internal Revenue Code).

(d) *Designees.* Section 204(h) notice may be provided to a person designated in writing by an applicable individual or by an employee organization representing participants who are applicable individuals, instead of being provided to that applicable individual or employee organization. Any designation of a representative made through an electronic method that satisfies standards similar to those of Q&A–13(c)(1) of this section satisfies the requirement that a designation be in writing.

(e) *Facts and circumstances test.* Whether a participant or alternate payee is an applicable individual is determined based on all relevant facts and circumstances at the time the section 204(h) notice must be provided (or is provided, if earlier).

(f) *Examples.* The following examples illustrate the rules in this Q&A–10:

Example 1. (i) *Facts.* A defined benefit plan requires an individual to complete 1 year of service to become a participant who can accrue benefits, and participants cease to accrue benefits under the plan at severance from employment with the employer. There are no alternate payees and employees are not represented by an employee organization. The plan is amended effective as of January 1, 2005 to significantly reduce the rate of future benefit accrual.

(ii) *Conclusion.* Section 204(h) notice is only required to be provided to individuals who, on January 1, 2005, have completed at least 1 year of service and are employed by the employer.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that the sole effect of the plan amendment is to alter the pre-amendment plan provisions under which benefits payable to an employee who retires after 20 or more years of service are unreduced for commencement before normal retirement age. The amendment requires 30 or more years of service in order for benefits commencing before normal retirement age to be unreduced, but the amendment only applies for future benefit accruals.

(ii) *Conclusion.* Section 204(h) notice is only required to be provided to individuals who, on January 1, 2005, have completed at least 1 year of service but less than 30 years of service, are employed by the employer, have not attained normal retirement age, and will have completed 20 or more years of service before normal retirement age if their employment continues to normal retirement age.

Example 3. (i) *Facts.* A plan is amended to reduce significantly the rate of future benefit accrual for all current employees who are participants. Based on the facts and circumstances, it is reasonable to expect that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or of former employees who are entitled to deferred vested benefits.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to any former employees.

Example 4. (i) *Facts.* The facts are the same as in *Example 3,* except that the plan covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit and, for this purpose, the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit and, for this purpose, the accrued benefit was determined at the time the qualified domestic relations order was issued by the court.

(ii) *Conclusion.* It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 5. (i) *Facts.* A plan covers hourly employees and salaried employees. The plan provides the same rate of benefit accrual for both groups. The employer amends the plan to reduce significantly the rate of future

benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 6. (i) *Facts.* A plan covers employees in Division M and employees in Division N. The plan provides the same rate of benefit accrual for both groups. The employer amends the plan to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 7. (i) *Facts.* The facts are the same facts as in *Example 6,* except that at the time the amendment is adopted, it is expected that thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M).

(ii) *Conclusion.* In this case, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q–11. What information is required to be provided in section 204(h) notice?

A–11. (a) *Explanation of amendment*—(1) *In general.* Section 204(h) notice must include sufficient information to allow applicable individuals to understand the effect of the plan amendment, including the approximate magnitude of the expected reduction. To the extent any expected reduction is not uniformly applicable to all participants, the notice must either identify the general classes of participants to whom the reduction is expected to apply, or by some other method include sufficient information to allow each applicable individual receiving the notice to determine which reductions are expected to apply to that individual. The information must be written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice. The type and amount of information necessary to satisfy these standards will vary depending on the nature of the change resulting from the amendment, as described further in paragraphs (a)(2) and (3) of this Q&A–11.

(2) *Required narrative*—(i) *Reduction in rate of future benefit accrual.* In the case of an amendment reducing the rate of future benefit accrual, the notice must include a description of the benefit or allocation formula prior to the amendment, a description of the benefit or allocation formula under the plan as amended, and the effective date of the amendment.

(ii) *Reduction in early retirement benefit or retirement-type subsidy.* In the case of an amendment that reduces an early retirement benefit or retirement-type subsidy (other than as a result of an amendment reducing the rate of future benefit accrual), the notice must describe how the early retirement benefit or retirement-type subsidy is calculated from the accrued benefit before the amendment, how the early retirement benefit or retirement-type subsidy is calculated from the accrued benefit after the amendment, and the effective date of the amendment. For example, if, for a plan with a normal retirement age of 65, the change is from an unreduced normal retirement benefit at age 55 to an unreduced normal retirement benefit at age 60 for benefits accrued in the future, with an actuarial reduction to apply for benefits accrued in the future to the extent that the early retirement benefit begins before age 60, the notice must state that and specify the factors that apply in calculating the actuarial reduction (e.g., a 5% per year reduction applies for early retirement before age 60).

(3) *Additional required information*—(i) *Standard for additional information.* In cases in which it is not reasonable to expect that the approximate magnitude of the reduction will be reasonably apparent from the description provided in accordance with in paragraph (a)(2) of this Q&A–11, further information is required. This requirement can be satisfied by furnishing additional narrative information, as described in paragraph (a)(3)(ii) of this Q&A–11; by furnishing illustrative examples, as described in paragraph (a)(3)(iii) of this Q&A–11; or through a combination of these.

(ii) *Additional narrative information.* Further narrative explanation of the effect of the difference between the old and new formulas or benefit calculation may be provided to make the approximate magnitude of the reduction apparent.

(iii) *Illustrative examples*—(A) *Requirement generally.* In cases in which it is not reasonable to expect that the approximate magnitude of the reduction will be reasonably apparent from the description provided in accordance with in paragraph (a)(2) of this Q&A–11 (plus any additional narrative information provided in accordance with paragraph (a)(3)(ii) of this Q&A–11), the notice must include one or more illustrative examples showing the approximate magnitude of the reduction in the example. Thus, illustrative examples are required for a change from a traditional defined benefit formula to a cash balance formula or a change that results in a period of time during which there are no accruals (or minimal accruals) with regard to normal retirement benefits or an early retirement subsidy (a wear-away period).

(B) *Examples must bound the range of reductions.* Where an amendment results in reductions that vary (as would occur for an amendment converting a traditional defined benefit formula to a cash balance formula or an amendment that results in a wear-away period) , the illustrative example(s) provided in accordance with this paragraph (a)(3)(iii) must show the approximate range of the reductions. However, any reductions that are likely to occur in only a de minimis number of cases are not required to be taken into account in determining the range of the reductions if a narrative statement is included to that effect and examples are provided that show the approximate range of the reductions in other cases. Amendments for which the maximum reduction occurs under identifiable circumstances, with proportionately smaller reductions in other cases, may be illustrated by one example illustrating the maximum reduction, with a statement that smaller reductions also occur. Further, assuming that the reduction varies from small to large depending on service or other factors, two illustrative examples may be provided showing the smallest likely reduction and the largest likely reduction.

(C) *Assumptions used in examples.* The examples required under this paragraph (a)(3)(iii) are not required to be based on any particular form of payment (such as a life annuity or a single sum), but may be based on whatever form appropriately illustrates the reduction. The examples generally may be based on any reasonable assumptions (e.g., assumptions relating to the representative participant's age, years of service, and compensation, along with any interest rate and mortality table used in the illustrations, as well as salary scale assumptions used in the illustrations for amendments that alter the compensation taken into account under the plan), but the section 204(h) notice must identify those assumptions. However, if a plan's benefit provisions include a factor that varies over time (such as a variable interest rate), the determination of whether an amendment is reasonably expected to result in a wear-away period

must be based on the value of the factor applicable under the plan at a time that is reasonably close to the date section 204(h) notice is provided, and any wear-away period that is solely a result of a future change in the variable factor may be disregarded. For example, to determine whether a wear-away occurs as a result of a section 204(h) amendment that converts a defined benefit plan to a cash balance pension plan that will credit interest based on a variable interest factor specified in the plan, the future interest credits must be projected based on the interest rate applicable under the variable factor at the time section 204(h) notice is provided.

(4) *No false or misleading information.* A notice that includes materially false or misleading information (or omits information so as to cause the information provided to be misleading) does not constitute section 204(h) notice.

(b) *Additional information when reduction not uniform*— (1) *In general.* If an amendment by its terms affects different classes of participants differently (e.g., one new benefit formula will apply to Division A and another to Division B), then the requirements of paragraph (a) of this Q&A–11 apply separately with respect to each such general class of participants. In addition, the notice must include sufficient information to enable an applicable individual who is a participant to understand which class he or she is a member of.

(2) *Option for different section 204(h) notices.* If a section 204(h) amendment affects different classes of applicable individuals differently, the plan administrator may provide to differently affected classes of applicable individuals a section 204(h) notice appropriate to those individuals. Such section 204(h) notice may omit information that does not apply to the applicable individuals to whom it is furnished, but must identify the class or classes of applicable individuals to whom it is provided.

(c) *Examples.* The following examples illustrate the requirements of paragraph (a) of this Q&A–11. In each example it is assumed that the notice is written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice.

Example 1. (i) *Facts.* Plan A provides that a participant is entitled to a normal retirement benefit of 2% of the participant's average pay over the 3 consecutive years for which the average is the highest (highest average pay) multiplied by years of service. Plan A is amended to provide that, effective January 1, 2004, the normal retirement benefit will be 2% of the participant's highest average pay multiplied by years of service before the effective date, plus 1% of the participant's highest average pay multiplied by years of service after the effective date. The plan administrator provides notice that states: ''Under the Plan's current benefit formula, a participant's normal retirement benefit is 2% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by the participant's years of service. This formula is being changed by a plan amendment. Under the Plan as amended, a participant's normal retirement benefit will be the sum of 2% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by years of service before the effective date, plus 1% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by the participant's years of service after the effective date. This change is effective on January 1, 2004.'' The notice does not contain any additional information.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 2. (i) *Facts.* Plan B provides that a participant is entitled to a normal retirement benefit at age 64 of 2.2% of the participant's career average pay times years of service. Plan B is amended to cease all accruals, effective January 1, 2004. The plan administrator provides notice that includes a description of the old benefit formula, a statement that after December 31, 2003, no participant will earn any further accruals, and the effective date of the amendment.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 3. (i) *Facts.* Plan C provides that a participant is entitled to a normal retirement benefit at age 65 of 2% of career average compensation times years of service. Plan C is amended to provide that the normal retirement benefit will be 1% of average pay over the 3 consecutive years for which the average is the highest times years of service. The amendment only applies to accruals for years of service after the amendment, so that each employee's accrued benefit is equal to the sum of the benefit accrued as of the effective date of the amendment plus the accrued benefit equal to the new formula applied to years of service beginning on or after the effective fate. The plan administrator provides notice that describes the old and new benefit formulas and also explains that for an individual whose compensation increases over the individual's career such that the individual's highest 3-year average exceeds the individual's career average, the reduction will be less or there may be no reduction.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 4. (i) *Facts.* (A) Plan D is a defined benefit pension plan under which each participant accrues a normal retirement benefit, as a life annuity beginning at the normal retirement age of 65, equal to the participant's number of years of service times 1.5 percent times the participant's average pay over the 3 consecutive years for which the average is the highest. Plan D provides early retirement benefits for former employees beginning at or after age 55 in the form of an early retirement annuity that is actuarially equivalent to the normal retirement benefit, with the reduction for early commencement based on reasonable actuarial assumptions that are specified in Plan D. Plan D provides for the suspension of benefits of participants who continue in employment beyond normal retirement age, in accordance with section 203(a)(3)(B) of ERISA and regulations thereunder issued by the Department of Labor. The pension of a participant who retires after age 65 is calculated under the same normal retirement benefit formula, but is based on the participant's service credit and highest 3-year pay at the time of late retirement with any appropriate actuarial increases.

(B) Plan D is amended, effective July 1, 2005, to change the formula for all future accruals to a cash balance formula under which the opening account balance for each participant on July 1, 2005 is zero, hypothetical pay credits equal to 5 percent of pay are credited to the account thereafter, and hypothetical interest is credited monthly based on the applicable interest rate under section 417(e)(3) of the Internal Revenue Code at the beginning of the quarter. Any participant who terminates employment with vested benefits can receive an actuarially equivalent annuity (based on the same reasonable actuarial assumptions that are specified in Plan D) commencing at any time after termination of employment and before the plan's normal retirement age of 65. The benefit resulting from the hypothetical account balance is in addition to the benefit accrued on June 30, 2005 (taking into account only service and highest 3-year pay before July 30, 2005), so that it is reasonably expected that no wear-away period will result from the amendment. The plan administrator expects that, as a general rule, depending on future pay increases and future interest rates, the rate of future benefit accrual after the conversion is higher for participants who accrue benefits before approximately age 50 and after approximately age 70, but is lower for participants who accrue benefits between approximately age 50 and age 70.

(C) The plan administrator of Plan D announces the conversion to a cash balance formula on May 16, 2005. The announcement is delivered to all participants and includes a written notice that describes the old formula, the new formula, and the effective date.

(D) In addition, the notice states that the Plan D formula before the conversion provided a normal retirement benefit equal to the product of a participant's number of years of service times 1.5 percent times the participant's average pay over the 3 years for which the average is the highest (highest 3-year pay). The notice includes an example showing the normal retirement benefit that will be accrued after June 30, 2005 for a participant who is age 49 with 10 years of service at the time of the conversion. The

plan administrator believes that such a participant is representative of the participants whose rate of future benefit accrual will be reduced as a result of the amendment. The example estimates that, if the participant continues employment to age 65, the participant's normal retirement benefit for service from age 49 to age 65 will be $657 per month for life. The example assumes that the participant's pay is $50,000 at age 49. The example states that the estimated $657 monthly pension accrues over the 16-year period from age 49 to age 65 and that, based on assumed future pay increases, this amount annually would be 9.1 percent of the participant's highest 3-year pay at age 65, which over the 16 years from age 49 to age 65 averages 0.57 percent per year times the participant's highest 3-year pay. The example also states that the sum of the monthly annuity accrued before the conversion in the 10-year period from age 39 to age 49 plus the $657 monthly annuity estimated to be accrued over the 16-year period from age 49 to age 65 is $1,235 and that, based on assumed future increases in pay, this would be 17.1 percent of the participant's highest 3-year pay at age 65, which over the employee's career from age 39 to age 65 averages 0.66 percent per year times the participant's highest 3-year pay. The notice also includes two other examples with similar information, one of which is intended to show the circumstances in which a small reduction may occur and the other of which shows the largest reduction that the plan administrator thinks is likely to occur. The notice states that the estimates are based on the assumption that pay increases annually after June 30, 2005 at a 4 percent rate. The notice also specifies that the applicable interest rate under section 417(e) for hypothetical interest credits after June 30, 2005 is assumed to be 6 percent, which is the section 417(e) of the Internal Revenue Code applicable interest rate under the plan for 2005.

(ii) *Conclusion.* The information in the notice, as described in paragraph (i)(C) of this *Example 4*, satisfies the requirements of paragraph (a)(2) of this Q&A–11 with respect to applicable individuals who are participants. The additional requirements of paragraph (a)(3) of this Q&A–11 are satisfied because, as noted in paragraph (i)(D) of this *Example 4,* the notice describes the old formula and describes the estimated future accruals under the new formula in terms that can be readily compared to the old formula, i.e., the notice states that the estimated $657 monthly pension accrued over the 16-year period from age 49 to age 65 averages 0.57 percent of the participant's highest 3-year pay at age 65. The requirement that the examples include sufficient information to be able to determine the approximate magnitude of the reduction would also be satisfied if the notice instead directly stated the amount of the monthly pension that would have accrued over the 16-year period from age 49 to age 65 under the old formula.

Example 5. (i) *Facts.* The facts are the same as in *Example 4*, except that, under the plan as in effect before the amendment, the early retirement pension for a participant who terminates employment after age 55 with at least 20 years of service is equal to the normal retirement benefit without reduction from age 65 to age 62 and reduced by only 5 percent per year for each year before age 62. As a result, early retirement benefits for such a participant constitute a retirement-type subsidy. The plan as in effect after the amendment provides an early retirement benefit equal to the sum of the early retirement benefit payable under the plan as in effect before the amendment taking into account only service and highest 3-year pay before July 1, 2005, plus an early retirement annuity that is actuarially equivalent to the account balance for service after June 30, 2005. The notice provided by the plan administrator describes the old early retirement annuity, the new early retirement annuity, and the effective date. The notice includes an estimate of the early retirement annuity payable to the illustrated participant for service after the conversion if the participant were to retire at age 59 (which the plan administrator believes is a typical early retirement age) and elect to begin receiving an immediate early retirement annuity. The example states that the normal retirement benefit expected to be payable at age 65 as a result of service from age 49 to age 59 is $434 per month for life beginning at age 65 and that the early retirement annuity expected to be payable as a result of service from age 49 to age 59 is $270 per month for life beginning at age 59. The example states that the monthly early retirement annuity of $270 is 38 percent less than the monthly normal retirement benefit of $434, whereas a 15 percent reduction would have applied under the plan as in effect before the amendment. The notice also includes similar information for examples that show the smallest and largest reduction that the plan administrator thinks is likely to occur in the early retirement benefit. The notice also specifies the applicable interest rate, mortality table, and salary scale used in the example to calculate the early retirement reductions.

(ii) *Conclusion.* The information in the notice, as described in paragraphs (i)(C) and (i)(D) of *Example 4* and paragraph (i) of this *Example 5*, satisfies the requirements of paragraph (a) of this Q&A–11 with respect to applicable individuals who are participants. The requirements of paragraph (a)(3) of this Q&A–11 are satisfied because, as noted in paragraph (i) of this *Example 5*, the notice describes the early retirement subsidy under the old formula and describes the estimated early retirement pension under the new formula in terms that can be readily compared to the old formula, i.e., the notice states that the monthly early retirement pension of $270 is 38 percent less than the monthly normal retirement benefit of $434, whereas a 15 percent reduction would have applied under the plan as in effect before the amendment. The requirements of paragraph (a)(1) of this Q&A–11 would also be satisfied if the notice instead directly stated the amount of the monthly early retirement pension that would be payable at age 59 under the old formula.

Q–12. What special rules apply if participants can choose between the old and new benefit formulas?

A–12. In any case in which an applicable individual can choose between the benefit formula (including any early retirement benefit or retirement-type subsidy) in effect before the section 204(h) amendment (old formula) or the benefit formula in effect after the section 204(h) amendment (new formula), section 204(h) notice has not been provided unless the applicable individual has been provided the information required under Q&A–11 of this section, and has also been provided sufficient information to enable the individual to make an informed choice between the old and new benefit formulas. The information required under Q&A–11 of this section must be provided by the date otherwise required under Q&A–9 of this section. The information sufficient to enable the individual to make an informed choice must be provided within a period that is reasonably contemporaneous with the date by which the individual is required to make his or her choice and that allows sufficient advance notice to enable the individual to understand and consider the additional information before making that choice.

Q–13. How may section 204(h) notice be provided?

A–13. (a) A plan administrator (including a person acting on behalf of the plan administrator, such as the employer or plan trustee) must provide section 204(h) notice through a method that results in actual receipt of the notice or the plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice. Section 204(h) notice must be provided either in the form of a paper document or in an electronic form that satisfies the requirements of paragraph (c) of this Q&A–13. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. However, the posting of notice is not considered provision of section 204(h) notice. Section 204(h) notice may be enclosed with or combined with other notice provided by the employer or plan administrator (for example, a notice of intent to terminate under title IV of ERISA). Except as provided in paragraph (c) of this Q&A–13, a section 204(h) notice is deemed to have been provided on a date if it has been provided by the end of that day. When notice is delivered by first class mail, the notice is considered provided as of the date of the United States postmark stamped on the cover in which the document is mailed.

(b) *Example.* The following example illustrates the provisions of paragraph (a) of this Q&A–13:

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual effective January 1, 2005. Under Q&A–9 of this section, section 204(h) notice is required to be provided at least 45 days before the effective date of the amendment. The plan administrator causes section 204(h) notice to be mailed to all affected participants. The mailing is postmarked November 16, 2004.

(ii) *Conclusion.* Because section 204(h) notice is given 45 days before the effective date of the plan amendment, it satisfies the timing requirement of Q&A–9 of this section.

(c) *New technologies*—(1)*General rule.* A section 204(h) notice may be provided to an applicable individual through an electronic method (other than an oral communication or a recording of an oral communication), provided that all of the following requirements are satisfied:

(i) Either the notice is actually received by the applicable individual or the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice by the applicable individual.

(ii) The plan administrator provides the applicable individual with a clear and conspicuous statement, in electronic or non-electronic form, that the applicable individual has a right to request and obtain a paper version of the section 204(h) notice without charge and, if such request is made, the applicable individual is furnished with the paper version without charge.

(iii) The requirements of this section must otherwise be satisfied. Thus, for example, a section 204(h) notice provided through an electronic method must be delivered on or before the date required under Q&A–9 of this section and must satisfy the requirements set forth in Q&A–11 of this section, including the content requirements and the requirements that it be written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice. Accordingly, when it is not otherwise reasonably evident, the recipient should be apprised (either in electronic or non-electronic form), at the time the notice is furnished electronically, of the significance of the notice.

(2) *Examples.* The following examples illustrate the requirement in paragraph (c)(1)(i) of this Q&A–13. In these examples, it is assumed that the notice satisfies the requirements in paragraph (c)(1)(ii) and (iii) of this section. The examples are as follows:

Example 1. (i) *Facts.* On July 1, 2003, M, a plan administrator of Company N's plan, sends notice intended to satisfy section 204(h) of ERISA to A, an employee of Company N and a participant in the plan. The notice is sent through e-mail to A's e-mail address on Company N's electronic information system. Accessing Company N's electronic information system is not an integral part of A's duties. M sends the e-mail with a request for a computer-generated notification that the message was received and opened. M receives notification indicating that the e-mail was received and opened by A on July 9, 2003.

(ii) *Conclusion.* With respect to A, although M has failed to take appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice, M satisfies the requirement of paragraph (c)(1)(i) of this Q&A–13 on July 9, 2003, which is when A actually receives the notice.

Example 2. (i) *Facts.* On August 1, 2003, O, a plan administrator of Company P's plan, sends a notice intended to satisfy section 204(h) of ERISA to B, who is an employee of Company P and a participant in Company P's plan. The notice is sent through e-mail to B's e-mail address on Company P's electronic information system. B has the ability to effectively access electronic documents from B's e-mail address on Company P's electronic information system and accessing the system is an integral part of B's duties.

(ii) *Conclusion.* Because access to the system is an integral part of B's duties, O has taken appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice. Thus, regardless of whether B actually accesses B's email on that date, O satisfies the requirement of paragraph (c)(1)(i) of this Q&A–13 on August 1, 2003, with respect to B.

(3) *Safe harbor in case of consent.* The requirement of paragraph (c)(1)(i) of this Q&A–13 is deemed to be satisfied with respect to an applicable individual if the section 204(h) notice is provided electronically to an applicable individual, and—

(i) The applicable individual has affirmatively consented electronically, or confirmed consent electronically, in a manner that reasonably demonstrates the applicable individual's ability to access the information in the electronic form in which the notice will be provided, to receiving section 204(h) notice electronically and has not withdrawn such consent;

(ii) The applicable individual has provided, if applicable, in electronic or non-electronic form, an address for the receipt of electronically furnished documents;

(iii) Prior to consenting, the applicable individual has been provided, in electronic or non-electronic form, a clear and conspicuous statement indicating—

(A) That the consent can be withdrawn at any time without charge;

(B) The procedures for withdrawing consent and for updating the address or other information needed to contact the applicable individual;

(C) Any hardware and software requirements for accessing and retaining the documents; and

(D) The information required by paragraph (c)(1)(ii) of this Q&A–13; and

(iv) After consenting, if a change in hardware or software requirements needed to access or retain electronic records creates a material risk that the applicable individual will be unable to access or retain the section 204(h) notice—

(A) The applicable individual is provided with a statement of the revised hardware and software requirements for access to and retention of the section 204(h) notice and is given the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(B) The requirement of paragraph (c)(3)(i) of this Q&A–13 is again complied with.

Q–14. What are the consequences if a plan administrator fails to provide section 204(h) notice?

A–14. (a) *Egregious failures*— (1) *Effect of egregious failure to provide section 204(h) notice.* Section 204(h)(6)(A) of ERISA provides that, in the case of any egregious failure to meet the notice requirements with respect to any plan amendment, the plan provisions are applied so that all applicable individuals are entitled to the greater of the benefit to which they would have been entitled without regard to the amendment, or the benefit under the plan with regard to the amendment. For a special rule applicable in the case of a plan termination, see Q&A–17(b) of this section.

(2) *Definition of egregious failure.* For purposes of section 204(h) of ERISA and this Q&A–14, there is an egregious failure to meet the notice requirements if a failure to provide required notice is within the control of the plan sponsor and is either an intentional failure or a failure, whether or not intentional, to provide most of the individuals with most of the information they are entitled to receive. For this purpose, an intentional failure includes any failure to promptly provide the required notice or information after the plan administrator discovers an

unintentional failure to meet the requirements. A failure to give section 204(h) notice is deemed not to be egregious if the plan administrator reasonably determines, taking into account section 204(h) of ERISA, section 4980F of the Internal Revenue Code, these regulations, other administrative pronouncements, and relevant facts and circumstances, that the reduction in the rate of future benefit accrual resulting from an amendment is not significant (as described in Q&A–8 of this section), or that an amendment does not significantly reduce an early retirement benefit or retirement-type subsidy.

(3) *Example.* The following example illustrates the provisions of this paragraph (a):

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual effective January 1, 2003. Section 204(h) notice is required to be provided 45 days before January 1, 2003. Timely section 204(h) notice is provided to all applicable individuals (and to each employee organization representing participants who are applicable individuals), except that the employer intentionally fails to provide section 204(h) notice to certain participants until May 16, 2003.

(ii) *Conclusion.* The failure to provide section 204(h) notice is egregious. Accordingly, for the period from January 1, 2003 through June 30, 2003 (which is the date that is 45 days after May 16, 2003), all participants and alternate payees are entitled to the greater of the benefit to which they would have been entitled under Plan A as in effect before the amendment or the benefit under the plan as amended.

(b) *Effect of non-egregious failure to provide section 204(h) notice.* If an egregious failure has not occurred, the amendment with respect to which section 204(h) notice is required may become effective with respect to all applicable individuals. However, see section 502 of ERISA for civil enforcement remedies. Thus, where there is a failure, whether or not egregious, to provide section 204(h) notice in accordance with this section, individuals may have recourse under section 502 of ERISA.

(c) *Excise taxes.* See section 4980F of the Internal Revenue Code and Q&A–15 of this section for excise taxes that may apply to a failure to notify applicable individuals of a pension plan amendment that provides for a significant reduction in the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy, regardless of whether or not the failure is egregious.

Q–15. What are some of the rules that apply with respect to the excise tax under section 4980F?

A–15. (a) *Person responsible for excise tax.* In the case of a plan other than a multiemployer plan, the employer is responsible for reporting and paying the excise tax. In the case of a multiemployer plan, the plan is responsible for reporting and paying the excise tax.

(b) *Excise tax inapplicable in certain cases.* Under section 4980F(c)(1) of the Internal Revenue Code, no excise tax is imposed on a failure for any period during which it is established to the satisfaction of the Commissioner that the employer (or other person responsible for the tax) exercised reasonable diligence, but did not know that the failure existed. Under section 4980F(c)(2) of the Internal Revenue Code, no excise tax applies to a failure to provide section 204(h) notice if the employer (or other person responsible for the tax) exercised reasonable diligence and corrects the failure within 30 days after the employer (or other person responsible for the tax) first knew, or exercising reasonable diligence would have known, that such failure existed. For purposes of section 4980F(c)(1) of the Internal Revenue Code, a person has exercised reasonable diligence, but did not know that the failure existed if and only if—

(1) The person exercised reasonable diligence in attempting to deliver section 204(h) notice to applicable individuals by the latest date permitted under this section; and

(2) At the latest date permitted for delivery of section 204(h) notice, the person reasonably believes that section 204(h) notice was actually delivered to each applicable individual by that date.

(c) *Example.* The following example illustrates the provisions of paragraph (b) of this Q&A–15:

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual. The employer sends out a section 204(h) notice to all affected participants and other applicable individuals and to any employee organization representing applicable individuals, including actual delivery by hand to employees at worksites. However, although the employer exercises reasonable diligence in seeking to deliver the notice, the notice is not delivered to any participants at one worksite due to a failure of an overnight delivery service to provide the notice to appropriate personnel at that site for them to timely hand deliver the notice to affected employees. The error is discovered when the employer subsequently calls to confirm delivery. Appropriate section 204(h) notice is then promptly delivered to all affected participants at the worksite.

(ii) *Conclusion.* Because the employer exercised reasonable diligence, but did not know that a failure existed, no excise tax applies, assuming that participants at the worksite receive section 204(h) notice within 30 days after the employer first knew, or exercising reasonable diligence would have known, that the failure occurred.

Q–16. How do section 4980F and section 204(h) apply when a business is sold?

A–16. (a) *Generally.* Whether section 204(h) notice is required in connection with the sale of a business depends on whether a plan amendment is adopted that significantly reduces the rate of future benefit accrual or significantly reduces an early retirement benefit or retirement-type subsidy.

(b) *Examples.* The following examples illustrate the rules of this Q&A–16:

Example 1. (i) *Facts.* Corporation Q maintains Plan A, a defined benefit plan that covers all employees of Corporation Q, including employees in its Division M. Plan A provides that participating employees cease to accrue benefits when they cease to be employees of Corporation Q. On January 1, 2006, Corporation Q sells all of the assets of Division M to Corporation R. Corporation R maintains Plan B, which covers all of the employees of Corporation R. Under the sale agreement, employees of Division M become employees of Corporation R on the date of the sale (and cease to be employees of Corporation Q), Corporation Q continues to maintain Plan A following the sale, and the employees of Division M become participants in Plan B.

(ii) *Conclusion.* No section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. The employees of Division M who become employees of Corporation R ceased to accrue benefits under Plan A because their employment with Corporation Q terminated.

Example 2. (i) *Facts.* Subsidiary Y is a wholly owned subsidiary of Corporation S. Subsidiary Y maintains Plan C, a defined benefit plan that covers employees of Subsidiary Y. Corporation S sells all of the stock of Subsidiary Y to Corporation T. At the effective date of the sale of the stock of Subsidiary Y, in accordance with the sale agreement between Corporation S and Corporation T, Subsidiary Y amends Plan C so that all benefit accruals cease.

(ii) *Conclusion.* Section 204(h) notice is required to be provided because Subsidiary Y adopted a plan amendment that significantly reduced the rate of future benefit accrual in Plan C.

Example 3. (i) *Facts.* As a result of an acquisition, Corporation U maintains two plans: Plan D covers employees of Division N and Plan E covers the rest of the employees of Corporation U. Plan E provides a significantly lower rate of future benefit accrual than Plan D. Plan D is merged with Plan E, and all of the employees of Corporation U will accrue benefits under the merged plan in accordance with the benefit formula of former Plan E.

(ii) *Conclusion.* Section 204(h) notice is required.

Example 4. (i) *Facts.* The facts are the same as in *Example 3,* except that the rate of future

benefit accrual in Plan E is not significantly lower. In addition, Plan D has a retirement-type subsidy that Plan E does not have and the Plan D employees' rights to the subsidy under the merged plan are limited to benefits accrued before the merger.

(ii) *Conclusion.* Section 204(h) notice is required for any participants or beneficiaries for whom the reduction in the retirement-type subsidy is significant (and for any employee organization representing such participants).

Example 5. (i) *Facts.* Corporation V maintains several plans, including Plan F, which covers employees of Division P. Plan F provides that participating employees cease to accrue further benefits under the plan when they cease to be employees of Corporation V. Corporation V sells all of the assets of Division P to Corporation W, which maintains Plan G for its employees. Plan G provides a significantly lower rate of future benefit accrual than Plan F. Plan F is merged with Plan G as part of the sale, and employees of Division P who become employees of Corporation W will accrue benefits under the merged plan in accordance with the benefit formula of former Plan G.

(ii) *Conclusion.* No section 204(h) notice is required because no plan amendment was adopted that reduces the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. Under the terms of Plan F as in effect prior to the merger, employees of Division P cease to accrue any further benefits (including benefits with respect to early retirement benefits and any retirement-type subsidy) under Plan F after the date of the sale because their employment with Corporation V terminated.

Q–17. How are amendments to cease accruals and terminate a plan treated under section 4980F of the Internal Revenue Code and section 204(h) of ERISA?

A–17. (a) *General rule*—(1) *Rule.* An amendment providing for the cessation of benefit accruals on a specified future date and for the termination of a plan is subject to section 4980F of the Internal Revenue Code and section 204(h) of ERISA.

(2) *Example.* The following example illustrates the rule of paragraph (a)(1) of this Q&A–17:

Example. (i) *Facts.* An employer adopts an amendment that provides for the cessation of benefit accruals under a defined benefit plan on December 31, 2003, and for the termination of the plan pursuant to title IV of ERISA as of a proposed termination date that is also December 31, 2003. As part of the notice of intent to terminate required under title IV in order to terminate the plan, the plan administrator gives section 204(h) notice of the amendment ceasing accruals, which states that benefit accruals will cease ''on December 31, 2003.'' However, because all the requirements of title IV for a plan termination are not satisfied, the plan cannot be terminated until a date that is later than December 31, 2003.

(ii) *Conclusion.* Nonetheless, because section 204(h) notice was given stating that the plan was amended to cease accruals on December 31, 2003, section 204(h) does not prevent the amendment to cease accruals from being effective on December 31, 2003. The result would be the same had the section 204(h) notice informed the participants that the plan was amended to provide for a proposed termination date of December 31, 2003 and to provide that ''benefit accruals will cease on the proposed termination date whether or not the plan is terminated on that date.'' However, neither section 4980F of the Internal Revenue Code nor section 204(h) of ERISA would be satisfied with respect to the December 31, 2003 effective date if the section 204(h) notice had merely stated that benefit accruals would cease ''on the termination date'' or ''on the proposed termination date.''

(3) *Additional requirements under title IV of ERISA.* See 29 CFR 4041.23(b)(4) and 4041.43(b)(5) for special rules applicable to plans terminating under title IV of ERISA.

(b) *Terminations in accordance with title IV of ERISA.* A plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 4980F of the Internal Revenue Code and section 204(h) of ERISA not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, neither section 4980F of the Internal Revenue Code nor section 204(h) of ERISA would in any event require that any additional benefits accrue after the effective date of the termination.

(c) *Amendment effective before termination date of a plan subject to title IV of ERISA.* To the extent that an amendment providing for a significant reduction in the rate of future benefit accrual or a significant reduction in an early retirement benefit or retirement-type subsidy has an effective date that is earlier than the termination date (or date of termination, as applicable) established under section 4048 of ERISA, that amendment is subject to section 4980F of the Internal Revenue Code and section 204(h) of ERISA. Accordingly, the plan administrator must provide section 204(h) notice (either separately, with, or as part of the notice of intent to terminate) with respect to such an amendment.

Q–18. What is the effective date of section 4980F of the Internal Revenue Code, section 204(h) of ERISA, as amended by EGTRRA, and these regulations?

A–18. (a) *Statutory effective date*—(1) *General rule.* Section 4980F of the Internal Revenue Code and section 204(h) of ERISA, as amended by EGTRRA, apply to plan amendments taking effect on or after June 7, 2001 (statutory effective date), which is the date of enactment of EGTRRA.

(2) *Transition rule.* For amendments applying after the statutory effective date in paragraph (a)(1) of this Q&A–18 and prior to the regulatory effective date in paragraph (c) of this Q&A–18, the requirements of section 4980F(e)(2) and (3) of the Internal Revenue Code and section 204(h) of ERISA, as amended by EGTRRA, are treated as satisfied if the plan administrator makes a reasonable, good faith effort to comply with those requirements.

(3) *Special notice rule*—(i) *In general.* Notwithstanding Q&A–9 of this section, section 204(h) notice is not required by section 4980F(e) of the Internal Revenue Code or section 204(h) of ERISA, as amended by EGTRRA, to be provided prior to September 7, 2001 (the date that is three months after the date of enactment of EGTRRA).

(ii) *Reasonable notice.* The requirements of section 4980F of the Internal Revenue Code and section 204(h) of ERISA, as amended by EGTRRA, do not apply to any plan amendment that takes effect on or after June 7, 2001 if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (and their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment. For purposes of this paragraph (a)(3)(ii), notice that complies with § 1.411(d)–6 of this chapter, as it appeared in the April 1, 2001 edition of 26 CFR part 1, is deemed to be notice which was reasonably expected to notify participants and beneficiaries adversely affected by the plan amendment (and their representatives) of the nature and effective date of the plan amendment.

(b) *Amendments taking effect prior to June 7, 2001.* For rules applicable to amendments taking effect prior to June 7, 2001, see § 1.411(d)–6 of this chapter, as it appeared in the April 1, 2001 edition of 26 CFR part 1.

(c) *Regulatory effective date.* Q&A–1 through Q&A–18 of this section apply to amendments taking effect on or after the date that is 120 days after publication of final regulations under this section (regulatory effective date).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–9529 Filed 4–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–043]

RIN 2115–AA97

Safety Zone; Town of Branford Annual Fireworks, Branford, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Town of Branford Annual Fireworks Display, in Branford Harbor, Branford, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Branford Harbor.

DATES: Comments and related material must reach the Coast Guard on or before May 23, 2002.

ADDRESSES: You may mail comments and related material to Marine Events, Coast Guard Group/Marine Safety Office Long Island Sound, Command Center, 120 Woodward Ave., New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Boatswain's Mate Second Class (BM2) Ryan Peebles, Group Operations Petty Officer, Coast Guard Group/MSO Long Island Sound at (203)468–4408.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD01–02–043], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone for the Town of Branford Annual Fireworks Display in Branford Harbor. The proposed safety zone is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. This proposed safety zone would cover the minimum area needed and impose the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Proposed Rule

The proposed safety zone is for the Town of Branford Annual Fireworks Display held in Branford Harbor, Branford, CT. This event will be held on June 22, 2002. In the event of inclement weather, the event will be held on June 23, 2001. The proposed safety zone would be in effect from 8:45 p.m. until 9:45 p.m. on the date of the event. The proposed safety zone would encompass all waters of Branford Harbor within a 600-foot radius of approximate position 41°15′30″ N, 072°49′20″ W (NAD 1983).

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

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone would temporarily close a portion of Branford Harbor to vessel traffic. However, the impact of this proposed rule is expected to be minimal for the following reasons: the event is of limited duration; vessels would not be precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories would be made to the maritime community; and marine traffic would be permitted to still transit around the zone during the event.

The projected size of this proposed safety zone was determined using National Fire Protection Association standards and the Captain of the Port Long Island Sound Standing Orders for 6-inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Branford Harbor during the time this zone is activated. This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the event is of limited duration; vessels would not be precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories would be made to the maritime community; and marine traffic would be permitted to transit around the zone during the event.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES** explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Boatswain's Mate Second Class (BM2) Ryan Peebles, Operations Petty Officer, Coast Guard Group/MSO Long Island Sound at (203) 468–4408.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 8:45 p.m. June 22, 2002 through 9:45 p.m. June 23, 2002, add temporary § 165.T01–043 to read as follows:

§ 165.T01–043 Safety Zone; Town of Branford Annual Fireworks Display, Branford, CT.

(a) *Location.* The following area is a safety zone: All waters of Branford Harbor within a 600-foot radius of approximate position 41°15′30″ N, 072°49′20″ W (NAD 1983).

(b) *Enforcement period.* This safety zone will be enforced from 8:45 p.m. to 9:45 p.m. June 22, 2002. In case the event is postponed because of inclement weather, the zone will enforced instead during the same hours on June 23, 2002.

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

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

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

Dated: April 3, 2002.

J.J. Coccia,

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

[FR Doc. 02–9938 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0322b; FRL–7158–5]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern the emission of volatile organic compounds (VOC) from the transfer of gasoline into stationary storage containers and from gasoline bulk plants and terminals. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must be received by May 23, 2002.

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

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

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

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

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local MBUAPCD Rules 418 and 419. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule.

Dated: February 15, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–9787 Filed 4–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 151

[USCG–1999–5117]

RIN 2115–AF77

Barges Carrying Bulk Liquid Hazardous Material Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its advance notice of proposed rulemaking concerning barges carrying bulk liquid hazardous material cargoes in order to focus its resources on rulemakings that more closely affect homeland security.

DATES: The advance notice of proposed rulemaking is withdrawn on April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Felleisen, Hazardous Materials Standards Division, Coast Guard, telephone 202–267–0085.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1999, we published an advance notice of proposed rulemaking entitled ''Barges Carrying Bulk Liquid Hazardous Material Cargoes'' in the **Federal Register** (64 FR 48976). We requested comments on the type and scope of any necessary revisions to regulations affecting barges carrying bulk hazardous material cargoes.

Withdrawal

In the wake of the September 2001 terrorist attacks on the United States, the Coast Guard has had to reevaluate all of its on-going rulemakings to better focus on those affecting homeland security. We have decided to withdraw this project, as well as all other projects not directly related to homeland security that we do not expect to take significant action on during the coming year. All comments and documents received in this docket will be available for use in future rulemakings.

This action is taken under the authority of 33 U.S.C. 1903, 46 U.S.C. 3703, 49 CFR 1.46.

Dated: April 15, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–9837 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–07]

Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its procedures for establishing passenger vessel financial responsibility for nonperformance of transportation. The proposed rule eliminates the availability of self-insurance, limits those who can provide a guaranty, and discontinues the use of a sliding scale for required coverage of unearned passenger revenue (''UPR'').

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than May 23, 2002.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Room 1046, Washington, DC 20573–0001, E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Room 970, Washington, DC 20573–0001, 202–523–5787. E-mail: *sandrak@fmc.gov.*

SUPPLEMENTARY INFORMATION: Section 3, Pub. L. 89–777, 46 U.S.C. app. 817e, (''section 3'') [1] requires passenger vessel

[1] Section 3 provides, in pertinent part:

operators (''PVOs'') [2] to establish their financial responsibility to indemnify passengers for nonperformance of transportation. The Commission's implementing regulations at 46 CFR part 540, subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least 110% of the PVO's highest unearned passenger revenue (''UPR'') [3] over the most recent two-year period, subject to a $15 million maximum for those PVOs establishing financial responsibility by means other than self-insurance or escrow agreement. However, those PVOs not qualifying by self-insurance may elect to use a sliding scale formula to compute the amount of financial responsibility required, if they can establish five years operational experience in the U.S. trades with a satisfactory explanation of any claim for nonperformance. Self-insuring PVOs must establish net worth equal to at least 110% of UPR.

Recent bankruptcies of several PVOs, coupled with the experience of passengers in receiving payment in satisfaction of claims, have caused the Commission to re-evaluate its rules governing PVO coverage for nonperformance. During the past fifteen months, the following cruise lines embarking passengers from U.S. ports ceased operations: Premier Cruise Operations Ltd., Commodore/Crown Cruise Lines, Cape Canaveral Cruise Lines, Inc., and American Classic Voyages Company (''AMCV'') [4]. All but Cape Canaveral filed for bankruptcy. After ceasing operations, Cape Canaveral provided reimbursement to passengers.

Even though passengers with tickets on Premier and Commodore experienced delays in being reimbursed,[5] they ultimately were protected by surety bonds under the Commission's PVO program. AMCV, however, had evidenced its financial responsibility by means of the self-insurance provisions of the Commission's rules (46 CFR 540.5(d)). Its passengers were limited to reimbursement by credit card companies, third party travel insurance the passenger had purchased,[6] or by filing a proof of claim with the appropriate bankruptcy court. Unfortunately, it appears that many of AMCV's passengers will receive little reimbursement.

Although self-insurers currently are required to submit quarterly and annual balance sheets and income statements, by the time such data are received, financial and economic conditions could change substantially.[7] Historically, self-insurers under the Commission's program typically are those with the greatest financial vulnerability.[8] Consequently, self-insurance presents significantly greater risk to passengers than other methods available to PVOs to demonstrate the required evidence of financial responsibility.

During the 1990s, the Commission raised the question of continuing to allow PVO self-insurance on a number of occasions.[9] Prior to 1993, the Commission required that a self-insuring PVO maintain both net worth and working capital in an amount exceeding their UPR by 110%. Effective February 1, 1993, the Commission eliminated the working capital requirement, instead requiring at least five years of operation in the U.S. trades with a satisfactory explanation of any claims for nonperformance of transportation, along with the necessary net worth.[10] The Commission's recent experiences, particularly with AMCV, indicate that length of operations and net worth are not sufficient criteria to insure the necessary protection to the passenger public.

One of the more serious criticisms of self-insurance is the virtual impossibility of protecting passengers when an operator begins to show financial problems. Once its financial situation begins to deteriorate, a self-insuring PVO may not be able to obtain a surety bond or a guaranty. Typically, to provide coverage in such a situation a bond issuer would require, in addition to the bond premium, secure, liquid collateral in an amount close to, if not equal to, the face amount of the bond. Providing such collateral, or even depositing UPR into an escrow agreement, could cause the demise of a PVO that is experiencing financial problems. Similarly, for the Commission to revoke the PVO's self-insurance certificate under such circumstances increases the risk that the PVO would be forced into bankruptcy, thus causing the very nonperformance the Commission seeks to prevent.

The Commission also has considered recent developments impacting its passenger vessel operator financial responsibility program. Those

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] UPR means ''passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.'' (46 CFR § 540.2(i)).

[4] Currently, the Delta Queen Steamboat Co. does provide limited service via the operations of the DELTA QUEEN and the MISSISSIPPI QUEEN. This service is covered by an approved escrow agreement.

[5] Premier's surety began payments late in the summer of 2001, almost a year after its bankruptcy, and Commodore's began paying claims the first week of January 2002, slightly more than a year after its bankruptcy.

[6] Often cancellation insurance is offered by both the cruise line itself and by various third party insurers. Not all policies include coverage in the event of bankruptcy.

[7] The financial information submitted by AMCV for the quarter ending June 30, 2001, was submitted on August 30, 2001. This data showed AMCV's net worth clearly exceeding that required by Commission rules for self-insurers. Data for the quarter ending September 30, 2001 had not been submitted by the time AMCV filed for bankruptcy on October 19, 2001.

[8] Financial data for the two private PVOs presently establishing coverage under the Commission's self-insurance criteria show both companies operating with substantially less than positive net working capital. The Commission currently is working with each of these PVOs to establish a more acceptable form of financial coverage.

[9] Docket No. 90–1, *Security for the Protection of the Public, Maximum Required Performance Amount;* Proposed Rule, 55 FR 1850 (January 19, 1990); Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990).

Fact Finding Investigation No. 19, *Passenger Vessel Financial Responsibility Requirements,* Order of Investigation, 55 FR 34610 (August 23, 1990).

Docket No. 91–32, *Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation—Advance Notice of Proposed Rulemaking and Notice of Inquiry,* 56 FR 40586 (August 15, 1991).

Docket No. 92–19, *Revision of Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 57 FR 19097 (May 4, 1992); Final Rule, 57 FR 41887 (September 14, 1992).

Docket No. 92–50, *Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-Insurance Qualification Standards;* Proposed Rule, 57 FR 47830 (October 20, 1992); Final Rule, 57 FR 62479 (December 31, 1992).

Docket No. 94–06, *Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 33059 (June 26, 1996).

Docket No. 94–21, *Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation.* 59 FR 52133 (October 26, 1994).

[10] Docket No. 92–50, *supra.*

developments include recent cruise line bankruptcies; the aftermath of the events of September 11, 2001; the current economic uncertainty and its effect on sales of cruises; and the impending deployment of a substantial increase in cruise ship capacity. These developments, combined with the financial condition of current self-insurers, inevitably lead to the conclusion that self-insurance is an inadequate method of protecting passengers for non-performance.

Additionally, the Commission occasionally has approved guarantors using the same financial standards as for self-insurers, *i.e.* net worth. As with self-insurers, the Commission finds those requirements inadequate for guarantors, and proposes to modify its guaranty requirements to limit guarantors to Protection and Indemnity Associations with substantial assets, reserves and reinsurance to protect covered PVOs.

Further, the current sliding scale formula provides for reduced coverage, the amount of which is not based on financial criteria. There is no requirement for a fixed amount under the sliding scale provisions. As a result, the current formula reduces the required financial coverage to levels the Commission now believes are inadequate, in light of recent developments.

Accordingly, the Commission is proposing to amend its rules to eliminate self-insurance as an acceptable method of evidencing financial responsibility under section 3 of Pub. L. 89–777. In addition, the proposed rule would eliminate the reduced coverage requirements under the Commission's sliding scale formula. If made final, all PVOs who are self-insurers or who use the sliding scale would be required to obtain coverage that comports with the Commission's new rules.

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S. C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a), and for the reasons stated above, the Federal Maritime Commission proposes to amend 46 CFR part 540 as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. The authority citation to Part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat.1356–1358 (46 U.S.C. app. 317(e, 817d); sec. 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1716(a)).

2. Section 540.5 is amended as follows:

a. Revise the heading and introductory text;

b. Revise paragraph (c);

c. Remove paragraphs (d) and (e).

d. Redesignate paragraph (f) as paragraph (d).

The revisions read as follows:

§ 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

* * * * *

(c) Filing with the Commission a guaranty on Form FMC–133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

3. Amend Form FMC–131, Part II, as follows:

a. Revise Item 10. to read:

b. Remove Item 15.

The revision reads as follows:

Part II—Performance

* * * * *

10. Items 11—14 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

[ ] Insurance (item 11).

[ ] Escrow (item 12).

[ ] Surety bond (item 13).

[ ] Guaranty (item 14).

* * * * *

15. [Removed]

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–9796 Filed 4–22–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM 95–31; DA 02–804]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Media Bureau of the Commission extends the deadline for filing comments and reply comments. The Bureau takes this action upon the motion of several interested parties. A brief extension of time will provide the public additional time to consider the difficult legal and policy issues at stake in the proceeding, and will not compromise the timely resolution of those issues.

DATES: Comments are due on or before May 15, 2002; reply comments are due on or before June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy Division, Media Bureau, (202) 418–2130 or *ebash@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Order* in MM 95–31; DA 02–804, adopted April 9, 2002 and released April 9, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail

qualexint@aol.com. 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, U.S. 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. 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. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Order

1. Before the Media Bureau is the Motion for Extension of Time (''*Motion*''), filed by the Station Resources Group, National Public Radio, Association of America's Public Television Stations, the National Federation of Community Broadcasters, on behalf of themselves and their members, and the Corporation for Public Broadcasting (collectively, ''Petitioners''). By this *Order,* the Media Bureau grants the Motion.

2. This docket has involved a series of notices and orders on the licensing of spectrum to noncommercial educational (''NCE'') broadcast stations. Most recently, the Commission issued the *Second Further Notice of Proposed Rulemaking* (''*2FNPRM*''), 67 FR 9945 (March 5, 2002), in this proceeding to seek comment on how to allocate and license spectrum that the Commission has not reserved specifically for NCE stations. In taking this action, the Commission responded to the decision of the U.S. Court of Appeals for the D.C. Circuit *in National Public Radio* v. *FCC*, which vacated the Commission's prior decision to resolve mutually exclusive applications for such ''non-reserved'' spectrum via competitive bidding, even when NCE stations had filed one or more of the applications. The *2FNPRM* established April 15, 2002 as the deadline for interested parties to file comments on new mechanisms to allocate and license non-reserved spectrum, and May 15, 2002 as the deadline for interested parties to file replies.

3. The Petitioners request the Media Bureau to extend the comment deadline by thirty days, until May 15, 2002. The Petitioners state that the Commission only provided the public forty-five days to comment on ''a difficult issue of statutory interpretation and communications policy'' that ''the Commission has been trying to resolve for many years. A brief extension of time is requested in order to permit various interested parties to work together to formulate an approach that will successfully resolve these issues.'' The Media Bureau has not received any opposition to the Motion.

4. Because delay in resolving this proceeding causes delay in allocating and licensing non-reserved spectrum in which both commercial and NCE stations have an interest, timely completion of this proceeding is especially important. At the same time, as Petitioners note, the question presented here is particularly difficult and its resolution is of vital concern to future applicants for NCE stations. Petitioners appear to be working together to fashion a consensus recommendation, and this could be very useful to the Commission in resolving this longstanding matter. In addition, the extension requested is for a relatively short period of time, and should not compromise the timely resolution of the proceeding. Good cause thus exists for, and the public interest would be served by, grant of Petitioners' Motion. Accordingly, the comment deadline in this proceeding is extended until May 15, 2002, and the reply comment deadline is extended until June 17, 2002.

5. Pursuant to § 1.46 of the Commission's rules, Petitioners' Motion is *granted.*

6. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules, 47 CFR 0.283.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–9871 Filed 4–22–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 78
Tuesday, April 23, 2002

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.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 25, 2002; 10 a.m.–12:30 p.m.

PLACE: Radio Free Asia, Suite 300, 2025 M Street, NW., Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: April 17, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–10066 Filed 4–19–02; 2:04 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Notice of Amended Final Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from the Republic of Korea

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

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel plate in coils from the Republic of Korea.

EFFECTIVE DATE: April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0182 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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

Scope of the Review

For purposes of this administrative review, the product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order is the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

Amendment of Final Results

On December 4, 2001, the Department of Commerce (''the Department'') issued its final results for the administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea for the November 4, 1998, through April 30, 2000, period of review. *See Stainless Steel Plate in Coils From the Republic of Korea; Final Results of Antidumping Duty Administrative Review (''Final Results'')*, 66 FR 64017 (December 11, 2001).

Interested parties did not file any ministerial error comments on the *Final Results*. However, the Department discovered that it unintentionally stated that the all others rate is the rate determined in the original less-than-fair value (''LTFV'') investigation, rather than the all others rate determined in the amended final determination of the LTFV investigation. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless*

Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea (''Amended Final Determinations''), 66 FR 45279 (August 28, 2001).

Our *Final Results* erroneously stated that the ''all others rate'' applicable to exporters or manufacturers who have not been covered in this review or investigated in the original LTFV investigation is 16.26 percent rather than the 6.08 percent established in the *Amended Final Determinations*. Thus, the correct all others rate is the all others rate established in the *Amended Final Determinations.*

The Department's regulations define a ministerial error as an ''error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial,'' citing 19 CFR 351.224(f). Therefore, the Department notes that it is now correcting this ministerial error and stating that the correct all others rate is 6.08 percent, in accordance with the *Amended Final Determinations*.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel plate in coils from the Republic of Korea to reflect the correction of the above-cited ministerial error.

No other changes have been made to the cash deposit requirements provided in the *Final Results*.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 12, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–9916 Filed 4–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2002 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Departments of Commerce and the Interior published a document in the **Federal Register** of March 5, 2002, concerning the allocation of year 2002 duty-exemptions for watch producers located in the Virgin Island and statistics on 2001 shipments of watches and watch movements into the customs territory of the United States under the Act and the dollar amount of creditable corporate income taxes plus creditable wages paid by Virgin Island watch producers. The document contained information that is incorrect and in need of clarification.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

Correction

In the **Federal Register** of March 5, 2002, at 67 FR 9961, in the last paragraph of the second column in the third line ''508,506'' is corrected to read ''528,506''.

Faryar Shirzad,

Assistant Secretary, for Import Administration, Department of Commerce.

Richard Miller,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 02–9917 Filed 4–22–02; 8:45 am]

BILLING CODES 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of Public Meetings

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meetings (Proposers' Conferences).

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend public meetings (Proposers'' Conferences) to learn more about the Advanced Technology Program (ATP). The format and content of each of the public meetings will be the same. The ATP is a competitive cost-sharing program designed for the Federal government to work in partnership with industry to accelerate the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant commercial payoffs and widespread benefits for the nation. This unique government-industry partnership accelerates the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services that can compete in rapidly changing world markets. The ATP challenges industry to take on higher risk projects with commensurately higher potential payoff to the nation. The ATP provides multi-year funding to single companies and to industry-led joint ventures.

DATES: The public meetings will be held on May 8, 2002 and May 10, 2002 in San Jose, California and Chicago (Rosemont), Illinois, respectively. In addition, on April 18, 2002, ATP announced in the **Federal Register** a Notice of a Proposers' Conference for May 2, 2002, in Gaithersburg, Maryland. All three meetings will be held from 9:30 a.m.–12:30 p.m. local time.

ADDRESSES: The meetings will be held at the following three locations: Thursday, May 2, 2002, Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland, Tel: 301–977–8900, Fax: 301–977–3450; Wednesday, May 8, 2002, Double Tree Hotel, 2050 Gateway Place, San Jose, California, Tel: 408–453–4000, Fax: 408–437–2898; and Friday, May 10, 2002, Holiday Inn O'Hare International, 5440 North River Road, Chicago (Rosemont), Illinois, Tel: 847–671–6350, Fax: 847–671–5406.

Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Administration Building 101, Room A413, Gaithersburg, MD 20899–4701.

Additionally, information on the ATP is available on the Internet at the ATP website *http://www.atp.nist.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone Toni Nashwinter at 301–975–3780 or e-mail: *Toni.Nashwinter@nist.gov.*

Requests for ATP information, application materials, and/or to have

your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will also have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If you reach ATP voice mail, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to *atp@nist.gov.* Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION: The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n) and was amended by the American Technology Preeminence Act of 1991 (Public Law 102–245). This law has been codified at 15 U.S.C. 278n. The ATP implementing regulations are published at 15 CFR part 295, as amended. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP). The purpose of the ATP is to assist United States businesses to carry out research and development on high risk, high-payoff, emerging and enabling technologies.

These public meetings will provide general information regarding the ATP, details on the application process, tips on preparing good proposals, and an opportunity for audience questions. The format and content of each of the public meetings will be the same.

No registration fee will be charged.

Registration for the public meetings is as follows:

For registration by phone, contact ATP at 1–800–ATP–FUND.

To register electronically, visit *www.atp.nist/gov/atp/reg_form.htm.* Please select the ATP Proposers' Conference form and register.

You may fax your registration by completing and printing the electronic form above. It should be faxed to 301–926–9524 or 301–590–3053.

Or, you may mail the registration form to the Advanced Technology Program, NIST, 100 Bureau Drive, Stop 4701, Gaithersburg, MD 20899–4701.

Dated: April 17, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–9816 Filed 4–22–02; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2004, which begins October 1, 2003. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2004 will become part of the public record.

DATES: The hearing will begin at 10 a.m. on June 6, 2002. The Office of the Secretary must receive written comments and requests from members of the public desiring to make oral presentations not later than May 23, 2002. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than May 30, 2002.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned ''Agenda and Priorities'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments, requests, and texts of oral presentations may also be filed by telefacsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the Commission's current strategic plan (revised September 2000), or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; telefacsimile (301) 504–0127; or by e-mail to *cpsc-os@cpsc.gov.* The strategic plan can also be obtained from the CPSC website at *www.cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 2004, which begins on October 1, 2003. This budget request must reflect the contents of the agency's strategic plan.

Accordingly, the Commission will conduct a public hearing on June 6, 2002, to receive comments from the public concerning its agenda and priorities for fiscal year 2004. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the current strategic plan (revised September 2000).

Persons who desire to make oral presentations at the hearing on June 6, 2002, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, telefax (301) 504–0127, or e-mail, *cpsc-os@cpsc.gov*, no later than May 23, 2002. Persons who desire a copy of the current strategic plan may

call or write Rockelle Hammond, office of the Secretary, CPSC, Washington DC 20207, telephone (301) 504–0800, (301) 504–0127, or may obtain it from the Commission's website at *www.cpsc.gov*.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than May 30, 2000. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 6, 2002 and will conclude the same day.

The Office of the Secretary should receive written comments on the Commission's agenda and priorities for fiscal year 2004, not later than May 23, 2002.

Dated: April 16, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–9815 Filed 4–22–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Inventions

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 available for licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent Application Serial No 09/671,166: MATRIX ASSISTED PULSED LASER EVAPORATION DIRECT WRITE, Navy Case No. 82,745.//U.S. Patent Application Serial No. 09/318,134: MAPLE–DW (MATRIX ASSISTED PULSED LASER EVAPORATION DIRECT WRITE), Navy Case No. 79,702.//U.S. Patent Application Serial No. 10/068,364: GENERATION OF BIOMATERIAL MICROARRAYS BY LASER TRANSFER, Navy Case No. 82,621.// U.S. Patent Application Serial No. 10/068,315: GENERATION OF VIABLE CELL ACTIVE BIOMATERIAL PATTERNS BY LASER TRANSFER, Navy Case No. 83,665.//U.S. Patent Application Serial No. 09/619,442 DIRECT–WRITE LASER TRANSFER AND PROCESSING, Navy Case No. 79,834.//

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: April 15, 2002.

T.J. Welsh,

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

[FR Doc. 02–9841 Filed 4–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,328,796 entitled ''Single-Crystal Material on Non-Single-Crystalline Substrate'', Navy Case No. 78,978.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: April 16, 2002.

T.J. Welsh,

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

[FR Doc. 02–9842 Filed 4–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.215F]

Office of Elementary and Secondary Education; Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program

This program provides grants to initiate, expand, and improve physical education programs, including after-school programs, for students in kindergarten through 12th grade in order to make progress toward meeting State standards for physical education.

For FY 2002 the competition for new awards focuses on projects designed to meet the absolute priority we describe in the PRIORITIES section of this application notice.

The Safe and Drug-Free Schools Program will administer this grant competition.

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations (CBOs)

Applications Available: April 23, 2002.

Deadline for Transmittal of Applications: June 7, 2002.

Deadline for Intergovernmental Review: August 6, 2002.

Estimated Available Funds: $49,500,000.

Estimated Range of Awards: $100,000—$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 165.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Priorities

This competition focuses exclusively on projects designed to meet a priority in the program statute (*see* 34 CFR 75.105(b)(2)(v)) and sections 5501–5507, part D, subpart 10 of title V of the ESEA (20 U.S.C. 7261.

Absolute Priority

Projects must initiate, expand, and improve physical education programs for students in one or more grades from kindergarten through grade 12 in order to make progress toward meeting State standards for physical education.

For FY 2002 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Competitive Preference Priority

Within the absolute priority for this competition for FY 2002, we will award five additional points to novice applicants. These points are in addition to any points the application earns under the evaluation criteria for the program.

Note: The total number of points an application may earn is 105.

Other Requirements

The following requirements also apply to this competition.

Administrative Costs

Not more than 5 percent of the grant funds made available to an LEA or CBO in any fiscal year may be used for administrative costs.

Federal Share

The Federal share for grants under this program may not exceed 90 percent of the total cost of a project. Applicants should calculate the maximum Federal share by determining the total cost of the proposed project and multiplying that amount by 0.90.

Prohibition Against Supplanting

Grant funds made available under this program shall be used to supplement and not supplant other Federal, State, or local funds available for physical education activities.

Participation of Home-Schooled or Private School Students

An application for funds under this program may provide for the participation of students enrolled in private, nonprofit elementary or secondary schools and their parents and teachers, or home-schooled students and their parents and teachers.

Equitable Distribution

We will ensure, to the extent practicable, an equitable distribution of awards among applicants serving urban and rural areas.

Additional Awards

Contingent upon the availability of funds, we may make additional awards in FY 2003 from the rank-ordered list of nonfunded applications from this competition.

Participation of Faith-based Organizations

Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

Application Requirements

To be considered for funding, an applicant is required to:

(1) Have conducted a needs assessment of the students being served or to be served by its program in terms of their progress toward meeting State standards for physical education;

(2) Based on the results of the needs assessment in (1), describe how the proposed activities will help students make progress toward meeting State standards for physical education; and

(3) Set measurable goals and objectives for the proposed project in terms of the student's progress toward meeting State standards for physical education, and provide a description of how progress toward achieving the goals and objectives will be measured annually.

Prohibited Uses of Funds

Grant funds made available under this program shall not be used for the following: (1) To hire teachers or other staff to provide direct instructional or other services to students; (2) to support extracurricular activities such as team sports and Reserve Officers' Training Corps (ROTC) program activities; or (3) to fund the construction of new buildings or other facilities such as athletic tracks or tennis courts.

Definitions

For the purpose of this competition, terms used in this notice have the following meanings:

Local Educational Agency

(A) General

In general, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) Administrative Control and Direction

The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA Schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(D) Educational Service Agencies

The term includes educational service agencies and consortia of those agencies.

(E) State Educational Agency

The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Community-based organization means a public or private nonprofit organization of demonstrated effectiveness that: (a) is representative of a community or significant segments of a community; and (b) provides educational or related services to individuals in the community.

Nonprofit as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Novice Applicant means—

(1) Any applicant for a grant from ED that—

(i) Has never received a grant or subgrant under the Carol M. White Physical Education program;

(ii) Has never been a member of a group application, submitted in accordance with § 75.127–75.129 of EDGAR, that received a grant under the Carol M. White Physical Education program; and

(iii) Has not had an active discretionary grant from the Federal Government in the five years before the

deadline date for applications under this competition.

(2) In the case of a group application submitted in accordance with § 75.127–129, a group that includes only parties that meet the requirements of paragraph (1) above.

Note: A grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Selection Criteria

The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for project (20 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project; and

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) Significance (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement;

(b) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(3) Quality of the Project Design (45 Points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the proposed activities constitute a coherent, sustained program of training in the field;

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;

(c) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(d) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(4) Quality of the Project Evaluation (15 Points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Secretary generally offers interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. This is the first competition under the Carol M. White Physical Education Program, which was substantially revised by the No Child Left Behind Act of 2001.

Applications and Information

For information about this competition contact Ethel Jackson, U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E308, Washington, DC 20202–6123. Telephone: (202) 260–2812, e-mail address:

Ethel.Jackson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

For printed applications contact: Education Publications Center (EDPubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf, you may call 1–877–576–7734. Web site: *http://www.ed.gov/about/ordering.jsp>http://www.ed.gov/about/ordering.jsp.* E-mail *<mailto:edpubs@inet.ed.gov'' edpubs@inet.ed.gov.*

Individuals with disabilities may obtain this document, or an application package, in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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

Pilot Project for Electronic Submission of Applications

In continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as discretionary grant competitions. The Carol M. White Physical Education Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic of paper format.
- You can submit all documents electronically, including the

Application for Federal Assistance (ED Form 424), Budget Information—Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-APPLICATION system.

2. Make sure that the applicant's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).

4. Place the PR/Award number in the upper right corner ED Form 424.

5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Carol M. White Physical Education Program at: *http://e-grants.ed.gov.*

We have included additional information on the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

Program Authority: 20 U.S.C. 7261.

Dated: April 17, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–9934 Filed 4–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Advanced Scientific Computing Advisory Committee; Renewal

AGENCY: Department of Energy.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee has been renewed for a two-year period beginning April, 2002. The Committee will provide advice to the Director, Office of Science, on the Advanced Scientific Computing Research Program managed by the Office of Advanced Scientific Computing Research.

The renewal of the Advanced Scientific Computing Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law No. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee may be obtained from Mrs. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on April 18, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–9950 Filed 4–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board.

DATES AND TIMES: Wednesday, May 8, 2002, 1 p.m.–6 p.m.

ADDRESSES: Ritz-Carlton, Pentagon City, Diplomat Conference Room, 1250 South Hayes Street, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

The agenda for the May 8th meeting has not been finalized. However, the meeting will include a series of briefings and discussions on the challenges facing the Department of Energy and its future mission. Board and subcommittee activities for the coming year will be identified; these are anticipated to include a discussion of Department of Energy Laboratory Operations, future department science priorities, and other current and new business. Members of the public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the afternoon period for public comment. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Arlington, Virginia, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying

approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's Web site, located at *http://www.hr.doe.gov/seab.*

Issued at Washington, DC, on April 18, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–9949 Filed 4–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–14–000]

Central New York Oil And Gas Company, L.L.C; Notice of Tariff Filing

April 17, 2002.

Take notice that on April 11, 2002, Central New York Oil And Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective May 11, 2002:

First Revised Sheet No. 5
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 19
First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 122
First Revised Sheet No. 132
First Revised Sheet No. 134
First Revised Sheet No. 138

CNYOG states that the purpose of its filing is to conform the electronic version of its tariff sheets, used for posting on the Commission's FASTR system, with the paper copies previously accepted by the Commission.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers 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 in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9899 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–15–000]

Horizon Pipeline Company, L.L.C.; Notice of Negotiated Rates

April 17, 2002.

Take notice that on April 11, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets to be effective April 15, 2002.

Horizon states that the purpose of this filing is to implement two negotiated rate transactions entered into by Horizon and (i) Northern Illinois Gas Company, dba Nicor Gas and (ii) Ameren Energy Gathering Company under Horizon's Rate Schedule FTS pursuant to Section 33 of the General Terms and Conditions of Horizon's Tariff. Horizon states that the negotiated rate agreements do not deviate in any material respect from the applicable form of service agreement in Horizon's Tariff.

Horizon states that copies of the filing are being mailed to its interested state commission and all parties set out on the Commission's official service lists in Docket Nos. CP00–129–000, CP00–130–000 and CP00–131–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9900 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–227–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

April 17, 2002.

Take notice that on April 12, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing, its eighth annual cashout report for the September 2000 through August 2001 period.

Midwestern states that the cashout report reflects a cashout gain during this period of $102,441. Midwestern will credit this gain to its firm shippers in its next issuance of invoices.

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 April 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be

viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9905 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1021–000]

Ontario Energy Trading International Corporation; Notice of Issuance of Order

April 17, 2002.

Ontario Energy Trading International Corporation (Ontario Energy) filed, under section 205 of the Federal Power Act in the above-docketed proceeding, seeking to sell capacity, energy, and ancillary services and to resell transmission capacity, at market based rates. Ontario Energy also requested certain waivers and authorizations. In particular, Ontario Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Ontario Energy.

On April 11, 2002, the Commission issued an Order Conditionally Granting Market-Based rate Authority And Granting Waivers (Order) that granted Ontario Energy's request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Ontario Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Ontario Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Ontario Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Ontario Energy's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 13, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9898 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–6–000]

Sinclair Oil Corporation, 550 East South Temple, Salt Lake City, UT 84102, Complainant, v. Rocky Mountain Pipeline System LLC, 555 Seventeenth Street, Denver, CO 80202 and BP Pipelines (North America), Inc., 801 Warrenville Road, Suite 700, Lisle, IL 60532, Respondents; Notice of Complaint

April 17, 2002.

Take notice that on April 15, 2002, Sinclair Oil Corporation (Sinclair) tendered for filing a Complaint against Rocky Mountain Pipeline System LLC (Rocky Mountain) and BP Pipelines (North America), Inc. (BP Pipelines).

Sinclair states in its Complaint that it purchases crude oil shipped on the Western Corridor pipeline from International Boundary, Montana to Casper, Wyoming. Sinclair alleges that BP Pipelines has denied Sinclair access to the Western Corridor pipeline and has charged unjust and unreasonable and unduly discriminatory and unduly preferential rates for pipeline transportation services on the Western Corridor line and has therefore violated the Interstate Commerce Act. Sinclair further alleges that Rocky Mountain has violated and is continuing to violate the Interstate Commerce Act by charging unjust and unreasonable and unduly discriminatory and unduly preferential rates for pipeline transportation services on the Western Corridor line.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 6, 2002. 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. Answers to the complaint shall also be due on or before May 6, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9902 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 372]

Southern California Edison Company; Notice of Teleconference

April 17, 2002.

a. *Date and time of Teleconference:* Thursday, May 2, 2002, 1 p.m..

b. *FERC Contact*: Nan Allen at 202–219–2938, nan.allen@ferc.gov.

c. *Purpose of the Teleconference*: A teleconference will be convened by Commission staff to discuss measures proposed by the Southern California Edison Company (SCE) to protect the federally-listed, threatened bald eagle and valley elderberry longhorn beetle. SCE has applied for a new license to operate the Lower Tule River Hydroelectric Project, FERC No. 372, Tulare County, California.

d. *Proposed Agenda*: (1) Introduction; (2) Recognition of Participants; (3) Teleconference Procedures; (4) SCE's proposed measures; and (5) Follow-up actions.

e. Only the U.S. Fish and Wildlife Service and the Commission are consulting parties for purposes of the teleconference. However, the license applicant and other interested parties to the relicensing proceeding will be permitted to provide relevant information, consistent with the limited purpose of the teleconference.

Any party wishing to participate in the teleconference should contact Nan Allen, 202–219–2938 or nan.allen@ferc.gov, by April 26, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9903 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–068]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

April 17, 2002.

Take notice that on April 2, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services (Negotiated Rate Agreement) which was accepted by the Commission in *Tennessee Gas Pipeline Company,* 97 FERC ¶ 61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of substitution of a fixed price effective April 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9904 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–000, et al.]

American Electric Power Company., et al.; Electric Rate and Corporate Regulation Filings

April 15, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. American Electric Power Company

[Docket Nos. EC98–40–000, ER98–2770–000, and ER98–2786–000]

Take notice that on April 11, 2002, the Market Monitor filed Market Monitoring of American Electric Rower their seventh quarterly report to the Federal Energy Regulatory Commission.

Comment Date: May 2, 2002.

2. Las Vegas Cogeneration II, L.L.C.

[Docket No. EG02–117–000]

Take notice that on April 11, 2002, Las Vegas Cogeneration II, L.L.C. (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware limited liability company formed for the exclusive purpose of owning and selling the output at wholesale of a generating facility located in North Las Vegas, Nevada (the Facility). The Facility will consist of four gas-fired turbine generators and ancillary equipment having a generating capability of approximately 230 MW.

Applicant stated that it served its application on the following: Public Utilities Commission of Nevada, South Dakota Public Utility Commission, Wyoming Public Service Commission, the Securities and Exchange Commission, and Nevada Power Company.

Comment Date: May 6, 2002.

3. Las Vegas Cogen Energy Financing Company, L.L.C.

[Docket No. EG02–118–000]

Take notice that on April 11, 2002, Las Vegas Cogen Energy Financing Company, L.L.C. (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant is a Delaware limited liability company formed for the exclusive purpose of acquiring, owning, and leasing to Las Vegas Cogeneration II, L.L.C. (LV Cogen II), four gas-fired turbine generators and associated generator step-up transformers having a generating capability of approximately 230 MW. LV Cogen II will incorporate the generating equipment into its generating facility located in North Las Vegas, Nevada (the Facility) and sell the output of the Facility exclusively at wholesale.

Applicant stated that it served its application on the following: Public Utilities Commission of Nevada, South Dakota Public Utility Commission, Wyoming Public Service Commission, the Securities and Exchange Commission, and Nevada Power Company.

Comment Date: May 6, 2002.

4. Exelon Generation Company, LLC

[Docket No. ER01–948–000]

Take notice that on April 10, 2002, Exelon Generation Company, LLC (Exelon Generation), requested the Federal Energy Regulatory Commission to act on Exelon Generation's January 12, 2001, filing in the captioned docket, which Exelon Generation on February 20, 2001, requested be held in abeyance pending further action by Exelon Generation.

Comment Date: May 1, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–922–001]

Take notice that on April 11, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's March 27, 2002 ''Order Accepting In Part And Rejecting In Part Tariff Amendment No. 42 And Dismissing Complaint,'' 98 FERC ¶ 61,327. The ISO states that it has served copies of this filing upon all parties listed on the official service list for this proceeding.

Comment Date: May 2, 2002.

6. Entergy Services, Inc.

[Docket No. ER02–1508–000]

Take notice that on April 10, 2002, Entergy Services, Inc., (Entergy Services), on behalf of the Entergy Operating Companies, tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services and Alabama Electric Cooperative, Inc. under Entergy Services' Rate Schedule SP.

Comment Date: May 1, 2002.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER02–1509–000]

Take notice that on April 11, 2002, Central Hudson Gas & Electric Corporation (Central Hudson),tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 201. Rate Schedule FERC No. 201 sets forth the terms and charges for transmission facilities provided by Central Hudson to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) for the transmission of output from the Roseton Generating Station.

The aforementioned cancellation is the result of the sale of the Roseton Generating Station, which was owned by the Company and Con Edison and Niagara Mohawk as tenants-in-common, to affiliates of Dynegy Power Corp. on January 30, 2001.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit the cancellation to become effective January 1, 2002.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment Date: May 2, 2002.

8. Pinnacle West Capital Corporation

[Docket No. ER02–1510–000]

Take notice that on April 11, 20002, Pinnacle West Capital Corporation (PWCC) tendered for filing with the Federal Energy Regulatory Commission (Commission) two Service Agreements under the Western Systems Power Pool Agreement for service to APS Energy Services. PWCC has requested waiver of the Commission's Notice Requirements for effective dates as stated in the service agreements.

PWCC has requested confidential treatment of certain privileged information pursuant to 18 CFR 388.112 in the long-term contracts. A copy of this filing has been served on APS Energy Services.

Comment Date: May 2, 2002.

9. Yuba City Energy Center, LLC

[Docket No. ER02–1512–000]

Take notice that on April 11, 2002, Yuba City Energy Center, LLC, (Yuba City) tendered for filing, under section'205 of the Federal Power Act , a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Yuba City proposes to own and operate a 48.7 megawatt simple cycle natural gas-fired peaking unit located in Sutter County, California.

Comment Date: May 2, 2002.

10. Public Service Company of New Mexico

[Docket No. ER02–1513–000]

Take notice that on April 11, 2002, Public Service Company of New Mexico (PNM) submitted for filing four executed service agreements for point-to-point transmission service, under the terms of PNM's Open Access Transmission Tariff, with the following customers: UBS AG, London Branch (UBS AG) (one agreement for Non-Firm Service and one agreement for Short-Term Firm Service) and PNM Bulk Power Marketing (PNM BPM) (one agreement for Non-Firm Service and one agreement for Short-Term Firm Service).

PNM requests April 1, 2002, as the effective date for each agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico. Copies of the filing have been sent to UBS AG and PNM BPM, as well as to the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: May 2, 2002.

11. Ameren Services Company

[Docket No.ER02–1514–000]

Take notice that on April 11, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Service Agreements between ASC and Ameren Energy, Energy-Koch Trading, LP and Upper Peninsula Power Company and Non-Firm Point-to-Point Transmission Service between ASC and Upper Peninsula Power Company (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: May 2, 2002.

12. West Penn Power Company (dba Allegheny Power)

[Docket No. ER02–1515–000]

Take notice that on April 11, 2002, West Penn Power Company, dba Allegheny Power, filed an Addendum to its Electric Service Agreement with Duquesne Light Company to add a delivery point. An effective date for the new delivery point of April 19, 2002 is requested.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Comment Date: May 2, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9839 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–62–000, et al.]

Canadian Niagara Power Company, Limited, et al.; Electric Rate and Corporate Regulation Filings

April 16, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Canadian Niagara Power Company, Limited

[Docket No. EC02–62–000]

Take notice that on April 12, 2002, Canadian Niagara Power Company Limited and Opinac Energy Corporation, tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and Part 33 of the Commission's regulations, 18 CFR part 33 (2001), an application for authorization to dispose of jurisdictional facilities pursuant to the sale of all of the ownership interests of Opinac Energy Corporation in Canadian Niagara Power Company, Limited, to Fortis Inc.

Comment Date: May 3, 2002.

2. Central Maine Power Company

[Docket No. ER02–1221–000]

Take notice that on April 12, 2002, Central Maine Power Company (CMP) tendered for filing the an Executed Amendment to the Interconnection Agreement by and between CMP and Gardner Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 144, First Revision.

Comment Date: May 3, 2002.

3. Illinois Power Company

[Docket No. ER02–1516–000]

Take notice that on April 12, 2002, Illinois Power Company (Illinois Power), with the Federal Energy Regulatory Commission (Commission) an Emergency Energy Service Agreement entered into with City of Columbia, Missouri, Columbia Water and Light pursuant to Illinois Power's Emergency Energy Tariff.

Illinois Power requests an effective date of March 15, 2002, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customers

Comment Date: May 3, 2002.

4. Cinergy Services, Inc

[Docket No. ER02–1517–000]

Take notice that on April 12, 2002, Cinergy Services, Inc. (Cinergy) and Commonwealth Edison Company are requesting a cancellation of Service Agreements No.6 under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, and Market-Based Power Sales Tariff—FERC Electric Tariff Original Volume No.6 and Volume No. 7.

Cinergy requests an effective date of April 15, 2002.

Comment Date: May 3, 2002.

5. Cinergy Services, Inc.

[Docket No. ER02–1518–000]

Take notice that on April 12, 2002, Cinergy Services, Inc. (Cinergy) and Commonwealth Edison Company on April 11, 2002 are requesting a cancellation of Service Agreement No 31, under Cinergy Operating Companies, FERC Electric Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of April 15, 2002.

Comment Date: May 3, 2002.

6. Plains End, LLC

[Docket No. ER02–1519–000]

Take notice that on April 12, 2002, Plains End, LLC (Plains End) tendered for filing a Power Purchase Agreement for power sales (Agreement) with Public Service Company of Colorado (PSCO) pursuant to which Plains End will sell electric wholesale services to PSCO at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 3, 2002.

7. PECO Energy Company

[Docket No. ER02–1520–000]

Take notice that on April 12, 2002, PECO Energy Company (PECO) submitted for filing the following Construction Agreements between PECO and FPL Energy Marcus Hook, L.P. (FPL). Construction Agreement for Attachment Facilities and Construction Agreement for Network upgrades, both related to the Marcus Hook Electric Generating Station. The Construction Agreements were respectively designated as Service Agreement 666 and 667 under PJM Interconnection L.L.C.'s (PJM) FERC Electric tariff Fourth Revised Volume No. 1.

The proposed effective date for the Construction Agreement for Attachment Facilities is March 19, 2002 and the proposed effective date for the Construction Agreement for Network upgrades is April 3, 2002. Copies of this filing were served on FPL and PJM.

Comment Date: May 3, 2002.

8. Central Maine Power Company

[Docket No. ER02–1521–000]

Please take notice that on April 12, 2002 , Central Maine Power Company (CMP) tendered for filing a service agreement for Non-firm Local Point-to-Point Transmission Service entered into with Gardner Brook Hydro under its new ownership. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP–FERC Electric Tariff, Original Volume No. 3, Fifth Revision, Service Agreement No. 157.

CMP also requests termination of FERC Electric Tariff, Original Volume No. 3, Fifth Revision, Service Agreement No. 156, submitted for filing on March 11, 2002 under Docket No. ER02–1301–000, to reflect the sale of the hydro facility on March 20, 2002.

Comment Date: May 3, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9893 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–177–003]

Cinergy Services, Inc.; Notice of Filing

April 17, 2002.

Take notice that on April 2, 2002, Cinergy Power Investments, Inc. (CPI) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Code of Conduct pursuant to the order issued in the above-captioned Dockets on March 18, 2002. Copies have been served on all parties designated on the official service list complies by the Secretary in these proceedings.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 26, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9897 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1526–000, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 17, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1526–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Alcoa Power Generating Inc., d/b/a/ APG Trading.

A copy of this filing was sent to Alcoa Power Generating Inc., d/b/a/ APG Trading.

Comment Date: May 6, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1527–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Calpine Energy Services, L.P.

A copy of this filing was sent to Calpine Services, L.P.

Comment Date: May 6, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1528–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreement for the transmission service requested by WPS Energy Services, Inc.

A copy of this filing was sent to WPS Energy Services, Inc.

Comment Date: May 6, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1529–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Nordic Marketing LLC.

A copy of this filing was sent to Nordic Marketing LLC.

Comment Date: May 6, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1530–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by H.Q. Energy Services (U.S.) Inc.

A copy of this filing was sent to H.Q. Energy Services (U.S.) Inc.

Comment Date: May 6, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1531–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power.

A copy of this filing was sent to City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power.

Comment Date: May 6, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1532–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Coral Power, L.L.C.

A copy of this filing was sent to Coral Power, L.L.C.

Comment Date: May 6, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1533–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Ameren Energy, Inc., as agent for and on behalf of Union Electric Co., d/b/a Ameren UE & AmerenEnergy Generating Co.

A copy of this filing was sent to Ameren Energy, Inc., as agent for and on behalf of Union Electric Co., d/b/a Ameren UE & AmerenEnergy Generating Co.

Comment Date: May 6, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1534–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Texas Electric Marketing, LLC.

A copy of this filing was sent to Texas Electric Marketing, LLC.

Comment Date: May 6, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1535–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Maclaren Energy Inc.

A copy of this filing was sent to Maclaren Energy Inc.

Comment Date: May 6, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1536–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Kiel Electric Utility.

A copy of this filing was sent to Kiel Electric Utility.

Comment Date: May 6, 2002.

12. Avista Corporation

[Docket No. ER–02–1539–000]

Take notice that on April 11, 2002, pursuant to section 205 of the Federal Power Act, Avista Corporation tendered for filing with the Federal Energy Regulatory Commission a proposed revision to FERC Rate Schedule No. 290, Avista Corporation's currently effective rate schedule for the 1964 Pacific Northwest Coordination Agreement (PNCA). Avista Corporation has filed a revised tariff sheet to reflect an extension of the term of the PNCA from June 30, 2003 to July 31, 2003. Avista Corporation requests that the Commission accept the change effective June 10, 2002.

A copy of this filing has been served upon all parties to the PNCA.

Comment Date: May 2, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1540–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by PSEG Energy Resources & Trade LLC.

A copy of this filing was sent to PSEG Energy Resources & Trade LLC.

Comment Date: May 6, 2002.

14. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1541–000]

Take notice that on April 15, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing Service Agreements for the transmission service requested by Ohio Valley Electric Corporation.

A copy of this filing was sent to Ohio Valley Electric Corporation.

Comment Date: May 6, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9894 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–114–000, et al.]

PH Generating Statutory Trust B, et al.; Electric Rate and Corporate Regulation Filings

April 12, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PH Generating Statutory Trust B

[Docket No. EG02–114–000]

Take notice that on April 8, 2002, PH Generating Statutory Trust B (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a Connecticut business trust formed for the benefit of First Chicago Leasing Corporation and other passive investors, to purchase and hold legal title to a 40-percent leasehold interest in the Aries Power Plant, an approximately 600-MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: May 3, 2002.

2. PH Generating Statutory Trust A

[Docket No. EG02–115–000]

Take notice that on April 8, 2002, PH Generating Statutory Trust A (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a Connecticut business trust formed for the benefit of Bankers Commercial Corporation and other passive investors, to purchase and hold legal title to a 60-percent leasehold interest in the Aries Power Plant, an approximately 600-MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: May 3, 2002.

3. Mirant Lovett, L.L.C., Mirant Bowline, L.L.C., Mirant NY-Gen, L.L.C.

[Docket Nos. ER99–2043–002 ER99–2044–002 and, ER99–2045–002]

Take notice that on April 8, 2002, Mirant Lovett, L.L.C., Mirant Bowline, L.L.C., and Mirant NY-Gen, L.L.C. (collectively the Mirant New York Companies) tendered for filing an updated market-power analysis in compliance with the requirement of the order granting them authority to make power sales at market-based rates.

Comment Date: April 29, 2002.

4. Unitil Power Corp.

[Docket No. ER02–999–001]

Take notice that on April 8, 2002, Unitil Power Corp. (Unitil Power) made a compliance filing pursuant to the Federal Energy Regulatory Commission's (Commission) March 22, 2002 Order accepting its proposed market-based rate tariff. Unitil Power's filing includes a code of conduct and amends its tariff to specify the ancillary services it will sell into markets administered by ISO New England and the New York ISO.

A copy of the filing was served upon the New Hampshire Public Utilities Commission.

Comment Date: April 29, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1307–000]

Take notice that on April 9, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing a request for a change in the effective date for Service Agreements for the transmission service requested by East Kentucky Power Cooperative.

A copy of this filing was sent to East Kentucky Power Cooperative.

Comment Date: April 30, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1310–000]

Take notice that on April 9, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing a request for a change in the effective date for Service Agreements for the transmission service requested by Omaha Public Power District.

A copy of this filing was sent to Omaha Public Power District.

Comment Date: April 30, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1311–000]

Take notice that on April 9, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, submitted for filing a request for a change in the effective date for Service Agreements for the transmission service requested by UtiliCorp United, Inc.

A copy of this filing was sent to UtiliCorp United, Inc.

Comment Date: April 30, 2002.

8. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–1500–000]

e notice that on April 8, 2002, Florida Power Corporation (FPC) tendered for filing Service Agreements for Non-Firm and Short-Term Firm Point-to-Point Transmission Service with Progress Ventures, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of March 10, 2002 for these Service Agreements. A copy of the filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: April 29, 2002.

9. Cinergy Services, Inc.

[Docket No. ER02–1501–000]

Take notice that on April 9, 2002, Cinergy Services, Inc. (Cinergy) and Alliant Energy Industrial Services, Inc., are requesting a cancellation of Service Agreement No.85, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of April 10, 2002.

Comment Date: April 30, 2002.

10. Cinergy Services, Inc.

[Docket No. ER02–1502–000]

Take notice that on April 9, 2002, Cinergy Services, Inc. (Cinergy) and Alliant Energy Industrial Services, Inc., are requesting a cancellation of Service Agreement No.85, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of April 10, 2002.

Comment Date: April 30, 2002

11. Cinergy Services, Inc.

Docket No. ER02–1503–000

Take notice that on April 9, 2002, Cinergy Services, Inc. (Cinergy) and Alliant Energy Industrial Services, Inc., are requesting a cancellation of Service Agreement No.161, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of April 10, 2002.

Comment Date: April 30, 2002.

12. Cinergy Services, Inc.

[Docket No. ER02–1504–000]

Take notice that on April 9, 2002, Cinergy Services, Inc. (Cinergy) and Alliant Energy Industrial Services, Inc.,

are requesting a cancellation of Service Agreement No.161, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 4.

Cinergy requests an effective date of April 10, 2002.

Comment Date: April 30, 2002.

13. Pinnacle West Capital Corporation

[Docket No. ER02–1505–000]

Take notice that on April 9, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing five Service Agreements under the Western Systems Power Pool Agreement for service to APS Energy Services and a Service Agreement with Utah Municipal Power Agency under PWCC's FERC Rate Schedule No. 1. PWCC has requested waiver of the Commission's Notice Requirements for effective dates as stated in the service agreements.

PWCC has requested confidential treatment of certain privileged information pursuant to 18 CFR 388.112 in the long-term contracts.

A copy of this filing has been served on APS Energy Services and Utah Municipal Power Agency.

Comment Date: April 30, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER02–1506–000]

Take notice that on April 9, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing a revised Schedule 2 to the PJM Open Access Tariff to include the Handsome Lake Energy LLC (Handsome Lake) revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service in the PJM region which was accepted for filing by the Commission in Docket No. ER02–771 on March 8, 2002.

PJM requests a waiver of the Commission's notice regulations to permit an effective date of April 1, 2002, consistent with the effective date of Handsome Lake's membership in PJM and the effective date for the revenue requirement as set forth in the Commission's letter order in Docket No. ER02–771.

PJM states that it served a copy of its filing on Handsome Lake, all PJM members, and each of the state electric regulatory commissions within the PJM region.

Comment Date: April 30, 2002.

15.New York Independent System Operator, Inc.

[Docket No. ER02–1507–000]

Take notice that on April 8, 2002 the New York System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) proposed revisions to its Open Access Transmission Tariff and Market Administration and Control Area Services Tariff to implement an enhancement to its pre-scheduling rules. The NYISO has requested an effective date of April 11, 2001.

The NYISO has mailed a copy of this compliance filing to all persons who are signatories to the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also mailed a copy to each person designated on the official service list maintained by the Commission for Docket No. ER02–638–000.

Comment Date: April 29, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–9892 Filed 4–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–14–000]

Conference on Emergency Reconstruction of Interstate Natural Gas Infrastructure; Notice of Technical Conference and Agenda

April 16, 2002.

As announced in the Notice of Conference issued on April 2, 2002, staff from the Federal Energy Regulatory Commission (Commission) and from the Office of Pipeline Safety of the Department of Transportation will convene a technical conference on April 22, 2002 at 9 a.m. in the Commission Meeting Room (2C) to begin discussions with interested parties on whether and how to clarify, expedite and streamline permitting and approvals for interstate pipeline reconstruction in the event of disaster, whether natural or otherwise. The conference Agenda is appended to this Notice.

Transcripts of the conference will be available from Ace Reporting Company (202–347–3700), for a fee. The transcript will be available on the Commission's RIMS system two weeks after the conference.

For additional information, please contact Carol Connors in the Office of External Affairs at *carol.connors@ferc.gov*.

Magalie R. Salas,

Secretary.

Conference on Emergency Reconstruction of Interstate Natural Gas Infrastructure April 22, 2002.

9 a.m. Opening Remarks—FERC and DOT 9:10 AM Special Presentation
Howard Schmidt, Chairman, Critical Infrastructure Protection Board
9:20 a.m. Formal Presentations
Presentations on existing authorities concerning emergency reconstruction, and recent experiences.
Berne L. Mosley, Senior Technical Expert, Office of Energy Projects
Jim O'Steen, Deputy Associate Administrator, Department of Transportation, Office of Pipeline Safety
10 a.m. Panel I—Regulatory Perspectives
Panel Members
Dinah Bear, General Counsel, Council on Environmental Quality
John Gawronski, Chief, Gas Safety, Office of Gas & Water New York State Public Service Commission
Bob Rosenthal, Director, Bureau of

Fixed Utility Services, Pennsylvania Public Utility Commission
Kevin J. Bliss, Washington Representative, Interstate Oil and Gas Compact Commission
Representative from the Federal Bureau of Investigation—Invited
Representative from the Office of Homeland Security—Invited
11 a.m. Facilitated Discussion
30 Minute facilitated discussion among panel members.
11:30 a.m. Question and Answer Session
15 minutes for questions from the audience.
11:45 a.m. Break
12 p.m. Introduction of Next Panel
12:05 p.m. Panel II—Industry and Other Perspectives
Panel Members
John Somerhalder, President, El Paso Pipeline Group
Janice Alperin, Associate General Counsel, El Paso Pipeline Group
Dena Wiggins, General Counsel, Process Gas Consumers
Mary Jane McCartney, Senior Vice President for Gas Operations, Consolidated Edison Company
Michelle Joy, General Counsel, American Oil Pipeline Association
12:55 p.m. Facilitated Discussion
30 Minute facilitated discussion among panel members.
1:25 p.m. Question and Answer Session
15 minutes for questions from the audience.
1:40 p.m. Closing Remarks

[FR Doc. 02–9895 Filed 4–22–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–15–000]

Conference on Emergency Reallocation of Natural Gas; Notice of Technical Conference and Agenda

April 16, 2002.

As announced in the Notice of Conference issued April 2, 2002, staff from the Federal Energy Regulatory Commission (FERC or Commission) and from the Department of Energy (DOE) will convene a technical conference on April 23, 2002 at 9 a.m. in the Commission Meeting Room (2C) to begin discussions with interested parties on whether and how to clarify, expedite and streamline processes for reallocating natural gas among shippers, pipelines, and local distribution companies (LDCs) in today's non-vertically integrated industry in the event of a disaster, whether natural or otherwise.

The conference Agenda is appended to this Notice. Transcripts of the conference will be available from Ace Reporting Company (202–347–3700), for a fee. The transcript will be available on the Commission's RIMS system two weeks after the conference.

For additional information, please contact Carol Connors in the Office of External Affairs at *carol.connors@ferc.gov.*

Magalie R. Salas,

Secretary.

Conference on Emergency Reallocation of Natural Gas April 23, 2002.

9 a.m. Opening Remarks—FERC and DOE
9:10 a.m. Formal Presentations
Presentations on the existing authorities concerning emergency reallocation.
Robert F. Christin, Energy Projects, Lead Counsel, Office of the General Counsel
Donald A. Juckett, Director, Natural Gas and Petroleum Import/Export Activities, Department of Energy, Office of Fossil Energy
9:50 a.m. Panel I—Regulatory Perspectives

Panel Members

Commissioner Charles R. Matthews, Texas Railroad Commission
Phil Teumim, Director, Office of Gas and Water, New York State Public Service Commission
Representative from the Office of Homeland Security—Invited
Representative from the National Governors Association—Invited
10:30 a.m. Facilitated Discussion
30 Minute facilitated discussion among panel members.
11:00 a.m. Question and Answer Session
15 minutes for questions from the audience.
11:15 a.m. Break
11:30 a.m. Introduction of Next Panel
11:35 a.m. Panel II—Industry and Other Perspectives
Richard Smead, Vice President, Regulatory Policy, El Paso Pipeline Group
Janice Alperin, Associate General Counsel, El Paso Pipeline Group
Dena Wiggins, General Counsel, Process Gas Consumers
Mike Linn, President, Allegheny Interests
Mark Haskell, Partner, Brunekant & Haskell (for Natural Gas Supply Association)
Jack Cashin, Senior Manager Policy, Electric Power Supply Association
Richard McMahon, EEI Group Director, Edison Electric Institute
LDC Representative from the Natural Gas Council—Invited
12:55 p.m. Facilitated Discussion
30 Minute facilitated discussion among panel members.
1:25 p.m. Question and Answer Session
15 minutes for questions from the audience.
1:40 p.m. Closing Remarks

[FR Doc. 02–9896 Filed 4–22–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board

April 17, 2002.

The Federal Energy Regulatory Commission (Commission) hereby provides notice of the membership of its Performance Review Board (PRB). This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4). The Commission's PRB adds the following member: J. Mark Robinson

Magalie R. Salas,

Secretary.

[FR Doc. 02–9901 Filed 4–22–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7174–8]

Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Clean Air Act ''Grandfathered'' Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing as an appendix to this notice a guidance on the CERCLA section 101(10)(H) federally permitted release definition as it applies to grandfathered sources under the Clean Air Act (CAA).

FOR FURTHER INFORMATION CONTACT: Visit the OECA Docket Web Site at www.epa.gov/oeca/polguid/enfdock.html or contact the RCRA/UST, Superfund and EPCRA Hotline at (800) 424–9346 or (703) 412–9810 in

Washington, DC area. For general questions about this guidance, please contact Lynn Beasley at (703) 603–9086 and for enforcement related questions, please contact Ginny Phillips at (202) 564–6139 or mail your questions to: U.S. EPA, 1200 Pennsylvania Ave., Washington DC, 20460, attention Lynn Beasley, mail code 5204G.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

This notice announces guidance discussing the application of the federally permitted release exemption to air emissions from sources that are ''grandfathered'' under the Clean Air Act (''CAA''). The federally permitted release exemption pertains to the reporting requirements under two federal emergency response and public right to know laws: section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9603, and section 304 of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11004. Federally permitted releases are defined in CERCLA section 101(10), which specifically identifies certain releases that are permitted or controlled under several environmental statutes. These releases are exempt from the notification requirements of CERCLA section 103 and EPCRA section 304. CERCLA section 101(10)(H) identifies releases that are exempt from reporting because they are subject to permits and regulations under the CAA.

On December 21, 1999, we published in the **Federal Register** the ''Interim Guidance on the CERCLA section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions'' (''Interim Guidance''). The Interim Guidance discussed several issues regarding the application of the federally permitted release exemption to air releases, including whether the exemption applies to releases from grandfathered sources. We requested comment on the Interim Guidance and held a public meeting, giving the public an opportunity to raise their concerns about these issues. On April 17, 2002, the Agency published the ''Guidance on the CERCLA section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions,'' (67 FR 18899). This Guidance responded to the concerns raised by commentors and superceded the Interim Guidance. The Guidance, however, did not address the question of grandfathered sources and federally permitted releases. The document we publish today discusses grandfathered sources. This document reflects our consideration of the comments submitted on the Interim Guidance regarding that issue, general concerns raised by previous **Federal Register** notices on the definition of federally permitted release, and our own experience in implementing the reporting requirements under CERCLA section 103 and EPCRA section 304. This guidance also incorporates principles articulated in EPA administrative adjudications.

This guidance does not impose new reporting requirements or change the types of releases which are required to be reported under CERCLA section 103 and EPCRA section 304 or the implementing regulations at 40 CFR parts 302 and 355. The legal authority for the reporting requirements arises from those statutory and regulatory provisions, as well as the statutory provisions on federally permitted releases, not from this guidance. Further, whether a particular air release of a hazardous substance or extremely hazardous substance is exempt from CERCLA section 103 and EPCRA section 304 reporting requirements requires a case-by-case determination based on the specific applicable permit language or control requirements. This guidance has no effect on CAA permit requirements.

The Office of Solid Waste and Emergency Response and the Office of Enforcement and Compliance Assurance jointly issue this guidance.

Dated: April 4, 2002.

Marianne Lamont Horinko,

Assistant Administrator for Solid Waste and Emergency Response.

Dated: April 11, 2002.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

Appendix A—Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Clean Air Act ''Grandfathered'' Sources

Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') and section 304 of the Emergency Planning and Community Right-to-Know Act (''EPCRA'') require that facilities notify federal, state and local authorities of releases of hazardous substances, if the amount of the release reaches a designated reportable quantity. Federally permitted releases, as defined in CERCLA section 101(10), are exempt from the CERCLA and EPCRA release reporting requirements. Federally permitted releases are certain releases that are permitted or controlled under several environmental statutes. CERCLA section 101(10)(H) identifies releases that are exempt from reporting because they are subject to permits and regulations under the Clean Air Act (''CAA''). This guidance document addresses the federally permitted release exemption as applied to releases from grandfathered sources under the CAA.

CERCLA section 101(10)(H) defines federally permitted releases under the CAA as: Any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections.

42 U.S.C. 9601(10)(H)(internal citations omitted). The Senate committee report explained the CERCLA definition of federally permitted release for air emissions:

In the Clean Air Act, unlike some other Federal regulatory statutes, the control of hazardous air pollutant emissions can be achieved through a variety of means: express emissions limitations (such as control on the pounds of pollutant that may be discharged from a source during a given time); technology requirements (such as floating roof tanks on hydrocarbons in a certain vapor pressure range); operational requirements (such as start up or shut down procedures to control emissions during such operations); work practices (such as the application of water to suppress certain particulates); or other control practices. Whether control of hazardous substance emissions is achieved directly or indirectly, the means must be specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant.

Senate Rep. 848, 96th Cong., 2d Sess. 49 (1980).

Generally, releases from grandfathered sources do not meet the definition of federally permitted releases, because Congress exempted those sources, rather than imposing permits or control regulations on them. Congress, in enacting several of the CAA programs, did not require existing pollution sources (unless modified) to install pollution controls. For example, certain requirements of the New Source Performance Standards Program apply specifically to new sources. See 42 U.S.C. 7411(b). Exempted existing sources are known as ''grandfathered'' sources under Title I of the CAA. Congress structured the CAA to force pollution control technology in a cost-effective manner. Thus, the decision not to require those sources was primarily based on economic considerations, *i.e.,* when pollution control technology could be efficiently and cost-effectively engineered into plants. See, for example, H.R. Rep. No. 95–294, at 185. For this reason, a facility's status as a grandfathered source does not necessarily mean that emissions from this facility do not pose a public health hazard.

To the extent that the releases from grandfathered sources are not subject to permits or control regulations, they generally will not meet the CERCLA section 101(10)(H) definition of federally permitted release based on the status of the facility as grandfathered. However, a source that is exempt from a CAA requirement because of its grandfathered status may be subject to

other applicable CAA permits or regulations. If there are federally enforceable permits or control regulations issued under the CAA provisions cited in CERCLA 101(10)(H) that apply to releases of hazardous substances from a grandfathered source, despite the grandfathered source exemption, those releases may qualify as federally permitted releases under CERCLA section 101(10)(H).

[FR Doc. 02–9914 Filed 4–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7173–5]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Leeds Silver Reclamation Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notification is hereby given that a Proposed Prospective Purchaser Agreement (PPA) associated with the Leeds Silver Reclamation Superfund Site located in Leeds, Utah was executed by the United States Department of Justice on March 5, 2002. This Agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), against Great Western Star, L.L.C. and Stacey L. Eaton, the prospective purchasers (the purchasers).

The settlement would require the purchasers to pay the U.S. Environmental Protection Agency $60,000. The purchasers intend to use the property as part of a plan to create a residential subdivision in the Silver Reef area, which is in close proximity to Leeds. The purchasers will use the Site property as open space within the development.

The purchasers have agreed to provide EPA with an irrevocable right of access to the Site, to conduct all business in compliance with all applicable local, State, and federal laws and regulations, and to exercise due care at the Site. The purchasers will record a certified copy of the PPA with the local Recorder's Office, and thereafter, each deed, title, or other instrument conveying an interest in the property shall contain a notice to successors-in-title not to disturb the implemented Site response.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202.

Availability: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202. A copy of the proposed Agreement may be obtained from Mia Wood, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202. Comments should reference the ''Leeds Silver Reclamation Superfund Site Prospective Purchaser Agreement'' and should be forwarded to Maureen O'Reilly, Enforcement Specialist, at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Mia Wood, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202.

It is so Agreed:

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 02–9915 Filed 4–22–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 16, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 24, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0882.

Title: Section 95.833, Construction Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 1,468.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1,468 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Ten year reporting requirement.

Needs and Uses: This rule section is necessary for 218–219 MHz service system licensees to file a report after ten years of license grant to demonstrate that they provide substantial service to its service areas. The information is used by the Commission staff to assess compliance with 218–219 MHz service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz licensees in the wireless

marketplace. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0223.

Title: Section 90.129, Supplemental Information to be Routinely Submitted with Applications, Non-Type Accepted Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: .33 hours (or 20 minutes).

Total Annual Burden: 33 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 90.129 requires applicants proposing to use transmitting equipment that is not type-certified by FCC laboratory personnel to provide a description of the proposed equipment. This assures that the equipment is capable of performing within certain tolerances that limit the interference potential of the device. The information collected is used by FCC engineers to determine the interference potential of the proposed equipment.

OMB Control No.: 3060–0881.

Title: Section 95.861, Interference.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 400.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 200 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion reporting requirement.

Needs and Uses: The notification requirement contained in Section 95.861 requires 218–219 MHz licensees to notify all households located both within a TV Channel 13 Grade B contour and an 218–219 MHz system service area are aware of potential interference to Channel 13 TV reception. This requirement is intended to prevent potential interference from 218–219 MHz operations to TV Channel 13 reception.

OMB Control No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 0.7 hours.

Total Annual Burden: 35 hours.

Annual Reporting and Recordkeeping Cost Burden: $5,500.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Needs and Uses: This rule requires that if airports have control towers or Federal Aviation Administration (FAA) flight service stations, and more than one licensee and want to have an automated aeronautical advisory station (unicom), they must write an agreement and keep a copy of the agreement with each licensee's station authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicom.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–9868 Filed 4–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 16, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 24, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0540.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,000.

Estimated Time Per Response: 10.5 hours (avg).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 21,000 hours.

Total Annual Cost: $1,260,000.

Needs and Uses: Domestic nondominant carriers must file tariffs pursuant to 47 U.S.C. section 203, while implementing regulations are found at 47 CFR sections 61.20–61.23. Domestic nondominant common carriers must file tariffs containing specific rates. The FCC uses this information to determine whether the rates, terms, and conditions of service offered are just and reasonable, as required under the Telecommunications Act of 1996, as amended.

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 806,100.

Estimated Time Per Response: 1.2 hours (avg).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 991,000 hours.

Total Annual Cost: $638,000.

Needs and Uses: 47 CFR section 68.300 requires telephones with electro-magnetic coil hearing aid compatibility to be stamped with the letters HAC (hearing aid compatible). Section 68.112(b)(3)(E) requires that employers with 15 or more employees provide emergency telephones for use by employees with hearing disabilities and that the employers ''designate'' such telephones for emergency use. Section 68.224 requires a notice to be contained on the surface of the packaging of a telephone that is not hearing aid compatible. The collection will be useful primarily to consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers.

Form Number: FCC Form 478.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Individuals or households; and State, local, or tribal government.

Number of Respondents: 28,414.

Estimated Time Per Response: 2 to 10 hours (avg).

Frequency of Response: Recordkeeping; On occasion and semi-annual reporting requirements; Third party disclosure.

Total Annual Burden: 135,126 hours.

Total Annual Cost: None.

Needs and Uses: The goal of Section 258 is to eliminate the practice of ''slamming,'' which is the unauthorized change of a subscriber's preferred carrier. The rules and requirements implementing Section 258 can be found in 47 CFR Part 64. The purpose of these rules is to improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams. In addition, each telephone exchange and/or telephone toll provider is required to submit a semi-annual report on the number of slamming complaints it receives.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–9870 Filed 4–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–746]

Wireline Competition Bureau Seeks Comment on RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In a public notice in this proceeding released on April 2, 2002, the Wireline Competition Bureau sought comment on RCC Holdings' petition seeking designation of eligibility to receive Federal universal service support for a service offered throughout its licensed service area in the state of Alabama.

DATES: Comments are due on or before May 23, 2002. Reply comments are due on or before June 7, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Mark G. Seifert, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On March 19, 2002, RCC Holdings, Inc. (RCC Holdings) filed with the Commission a petition pursuant to section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for service offered throughout its licensed service area in the state of Alabama. Specifically, RCC Holdings contends that the Alabama Public Service Commission has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers, RCC Holdings meets all the statutory and regulatory prerequisites for ETC designation, and designating RCC Holdings as an ETC will serve the public interest.

Pursuant to § 54.207(c) of the Commission's rules, RCC Holdings also requests that the Commission redefine the service areas of the following rural incumbent local exchange carriers: (1) Butler Telephone Company Inc., (2) Alltel of Alabama, (3) Frontier Communications of the South, Inc., (4) Frontier Communications of Alabama, Inc., (5) Interstate Telephone Company, (6) Millry Telephone Company, and (7) Mon-cre Telephone Cooperative Inc. (collectively ''Rural ILECs''). RCC Holdings states that it is not licensed to serve the service areas of the Rural ILECs in their entirety. RCC Holdings seeks redefinition of the service areas of the Rural ILECs in order to be designated an ETC only where RCC Holdings is licensed to provide CMRS in the state of Alabama. The Wireline Competition Bureau seeks comment on the RCC Holdings Petition, including the requested service area redefinition.

The petitioner must provide copies of its petition to the Alabama Public Service Commission at the time of filing with the Commission. The Commission will also send a copy of this Public Notice to the Alabama Public Service Commission by overnight express mail to ensure that the Alabama Public Service Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due May 23, 2002, and reply comments are due June 7, 2002. 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, May 1, 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, U.S. 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. 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. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service

mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW, Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelve Street, SW, Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 02–9869 Filed 4–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report titles: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers); Deregistration Statement for Persons Registered Pursuant to Regulation U; Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U; Annual Report; Statement of Purpose for an Extension of Credit by a Creditor; and Statement of Purpose for an Extension of Credit Secured by Margin Stock
Agency form numbers: FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, FR U–1
OMB control numbers: 7100–0011: FR G–1, FR G–2, FR G–4; 7100–0018: FR G–3; 7100–0019: FR T–4; and 7100–0115: FR U–1
Frequency: FR G–1, FR G–2, FR G–3, FR T–4, and FR U–1: on occasion FR G–4: annual
Reporters: Individuals and business
Annual reporting hours: 1,901 reporting; 252,978 recordkeeping
Estimated average hours per response: FR G–1: 2.5 hours; FR G–2: 15 minutes; FR G–3: 10 minutes; FR G–4: 2.0 hours; FR T–4: 10 minutes; and FR U–1: 10 minutes
Number of respondents: FR G–1: 98; FR G–2: 65; FR G–3: 500; FR G–4: 820; FR T–4: 250; and FR U–1: 6,971
Small businesses are affected.

General description of report: These information collections are mandatory (15 U.S.C. 78g). The information in the FR G–1 and FR G–4 is given confidential treatment (5 U.S.C. 552(b)(4)). The FR G–2 does not contain confidential information. The FR G–3, FR T–4, and FR U–1 are not submitted to the Federal Reserve and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 ('34 Act) authorizes the Board to regulate securities credit issued by banks, brokers and dealers, and other lenders. The purpose statements, FR U–1, FR T–4, and FR G–3, are recordkeeping requirements for banks, brokers and dealers, and other lenders, respectively, to document the purpose of their loans secured by margin stock. Other lenders also must register and deregister with the Federal Reserve using the FR G–1 and FR G–2, respectively, and must file an annual report (FR G–4). The Federal Reserve uses the data to identify lenders subject to Regulation U, to verify compliance with Regulations T, U, and X, and to monitor margin credit.

Final approval under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
OMB control number: 7100–0216
Frequency: Annual
Reporters: foreign banks with U.S. branches or agencies
Annual reporting hours: 44
Estimated average hours per response: 1.0
Number of respondents: 44
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(i), 248–l, and 464) and is not given confidential treatment.
Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve Board's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Federal Reserve account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in the net debit cap calculation, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225

may use an alternative capital measure based on its nonrelated liabilities.
Current Actions: On January 29, 2002, the Board published proposed changes to this information collection and the comment period ended April 1, 2002 (67 FR 4258). There were no public comments received. The Board has approved the changes, as originally proposed.

The Federal Reserve Board has revised its PSR policy regarding the calculation of an FBO's net debit cap, described in detail in the Federal Register notice published December 13, 2001 (66 FR 64419). The revised PSR policy modifies the criteria used to determine the U.S. capital equivalency for an FBO. There are no changes to the FR 2225 reporting form; however, the reporting instructions will be modified to correspond with the revised policy. The revisions to the FR 2225 instructions are summarized below.

The revised PSR policy (1) eliminates the Basle Capital Accord (BCA) criteria and replaces it with the strength of support assessment (SOSA) rankings and financial holding company (FHC) status in determining U.S. capital equivalency for an FBO, (2) raises the percentage of capital used in calculating U.S. capital equivalency for certain FBOs, and (3) revises the definition of an alternative measure for U.S. capital equivalency. The SOSA ranking is composed of four factors, including the FBO's financial condition and prospects, the system of supervision in the FBO's home country, the record of the home country's government in support of the banking system or other sources of support for the FBO; and transfer risk concerns. Transfer risk relates to the FBO's ability to access and transmit U.S. dollars, which is an essential factor in determining whether an FBO can support its U.S. operations. The SOSA ranking is based on a scale of 1 through 3, with 1 representing the lowest level of supervisory concern.

Specifically, the revised PSR policy allows U.S. capital equivalency to equal the following:

- 35 percent of capital for FBOs that are FHCs
- 25 percent of capital for FBOs that are not FHCs and have a strength of support assessment ranking (SOSA) of 1
- 10 percent of capital for FBOs that are not FHCs and are ranked a SOSA 2
- 5 percent of ''net due to related depository institutions'' for FBOs that are not FHCs and are ranked a SOSA 3.

2. Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB control number: 7100-0217
Frequency: Annual
Reporters: depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks
Annual reporting hours: 1,902
Estimated average hours per response: 1.0
Number of respondents: 1,902
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248-l, and 464) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
Abstract: The Federal Reserve Board's Payment System Risk (PSR) policy relies in part on the efforts of individual institutions to identify, control, and reduce their exposure. The Federal Reserve collects these resolutions annually to provide information that is essential for their administration of the PSR policy. The Report of Net Debit Cap comprises three resolutions, located in Appendix B of the *Guide to the Federal Reserve's Payments System Risk Policy*, which are filed by an institution's board of directors depending on the institution's needs. Two of the three resolutions are used by institutions to establish a capacity for daylight overdrafts that is greater than the capacity that is typically assigned by a Reserve Bank. The first resolution is used to establish a self–assessed net debit cap, whereas the second resolution is used to establish a de minimis net debit cap. The third resolution is used by institutions to establish an interaffiliate transfer arrangement.
Current Actions: On January 29, 2002, the Board published proposed changes to this information collection and the comment period ended April 1, 2002 (67 FR 4258). There were no public comments received. The Board has approved the changes, as originally proposed.

The Federal Reserve Board has revised its PSR policy regarding additional collateralized capacity and interaffiliate transfer arrangements described in detail in the Federal Register notice published December 13, 2001 (66 FR 64419). The Federal Reserve will add a two–part model resolution to Appendix B used to establish additional collateralized capacity and eliminate the model resolution used to establish an interaffiliate transfer arrangement. In addition, the order of the model resolutions in Appendix B will be changed. The revisions are described below in detail.

Revisions to Appendix B

- **COLLATERALIZED CAPACITY (3A)** – Depository institutions with self-assessed net debit caps that request additional daylight overdraft capacity must submit, to their Administrative Reserve Banks, written justification to support the request for the additional capacity. In evaluating a depository institution's request, the Administrative Reserve Bank will review the institution's daylight overdraft levels and financial condition. If the Administrative Reserve Bank approves the request, the depository institution will need to file the collateralized capacity resolution. This resolution was designed to specify the amount, if any, of Reserve Bank approved collateral pledged and the maximum daylight overdraft capacity amount.
- **COLLATERALIZED CAPACITY: SUPPLEMENT FOR SECURITIES IN-TRANSIT (3B)** – If a depository institution has been approved to receive additional collateralized daylight overdraft capacity and pledges securities in transit to support the additional capacity, the depository institution will need to file a new resolution 3b. The Administrative Reserve Bank may accept securities in transit on the Fedwire book–entry securities system as collateral to support an institution's maximum daylight overdraft capacity level. Securities in transit refer to book–entry securities transferred over Fedwire's National Book–Entry System that have been purchased by a depository institution, but not yet paid for and owned by the institution's customers. In transit collateral differs from stable pool collateral in that the value of in transit collateral regularly fluctuates intraday where as the value of stable pool generally does not.
- **INTER-AFFILIATE TRANSFER ARRANGEMENTS** – The rescission of the interaffiliate transfer policy rule is effective on December 31, 2001, at which time depository institutions will no longer be required to submit a resolution to establish an interaffiliate agreement.

The order of the model resolutions located in Appendix B will be changed to:

- De Minimis Cap
- Self-Assessment Cap
- Collateralized Capacity (3a)
- Collateralized Capacity: Supplement for Securities In–transit (3b)

3. Report titles: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an

Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.
Agency form numbers: FR Y–3, FR Y–3N, and FR Y–4
OMB control number: 7100–0121
Frequency: Event–generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 22,003
Estimated average hours per response:
FR Y–3, Section 3(a)(1): 49 hours;
FR Y–3, Section 3(a)(3) and 3(a)(5): 59.5 hours;
FR Y–3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours;
FR Y–4, complete notification: 12 hours;
FR Y–4, expedited notification: 5 hours; and
FR Y–4, post-consummation: 0.5 hours.
Number of respondents: 823
Small businesses are affected.
General description of reports: This information collection is mandatory (12 U.S.C. 1842(a)(1), 1844(c), and 1843(c)(8)) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
Abstract: The Federal Reserve requires the application and the notifications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956 (the BHC Act). The forms collect information concerning proposed BHC formations, acquisitions, and mergers, and proposed nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to permissibility, competitive effects, adequacy of financial and managerial resources, net public benefits, and impact on the convenience and needs of affected communities.
Current Actions: On January 29, 2002, the Board published proposed changes to this information collection and the comment period ended April 1, 2002 (67 FR 4257). There were no public comments received. The Board has approved the changes, as originally proposed.

Board of Governors of the Federal Reserve System, April 17, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–9864 Filed 4–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 8, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Greene Revocable Trust U/A/D 8-29-90 Barnette Ellis Green, Jr. & Hariot Hughes Greene, Co-Trustees; Hariot H. Greene Revocable Trust U/A/D 6-29-99 Barmette Ellis Greene, Jr. & Hariot Hughes Greene, Co-Trustees; Jack Irvine Greene; Janie Elizabeth Greene; Ellis Sutherland Greene and Kathleen Farrell Greene; Griffin Aubrey Greene and Camille Koby Greene; Griffin Aubrey Greene; Kelly Foster Greene; Kelly Foster Greene and Linda Cook Greene; Scott Hughes Steiger Irrevocable Trust II U/A/D 1-10-89 Griffin Aubrey Greene and Janie Elizabeth Greene, Trustees; Derek Brian Steiger Irrevocable Trust II U/A/D 1-10-89 Griffin Aubrey Greene and Janie Elizabeth Greene, Trustees; Jasaline Celeste Greene Trust U/A/D 8-29-90 Ellis Sutherland Greene and Janie Elizabeth Greene, Trustees; Amanda Kathleen Greene Trust U/A/D 8-29-90 Ellis Sutherland Greene and Janie Elizabeth Greene, Trustees; Kolby Barnette Greene Trust U/A/D 11-12-98 Kelly Foster Greene and Janie Elizabeth Greene, Trustees; Kylee Joyce Greene Trust U/A/D 3-24-00 Kelly Foster Greene and Janie Elizabeth Greene Trustees; Greene Girls Properties, LLP; Greene Groves & Ranch, LTD; Camille Koby Greene, IRA; Jack Irvine Greene, IRA; Griffin Aubrey Greene; Whitney C. Greene; Lyndal M. Greene; Aubrey L. Greene; Anabelle G. Greene, all of Vero Beach, Florida; to retain voting shares of Indian River Banking Company, Vero Beach, Florida, and thereby indirectly retain voting shares of Indian River National Bank, Vero Beach, Florida.

Board of Governors of the Federal Reserve System, April 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–9936 Filed 4–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2002.

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

1. Citizens Bank Holding Company, Pocatello, Idaho; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Community Bank, Pocatello, Idaho.

2. Snake River Bancorp, Inc., Twin Falls, Idaho; to become a bank holding company by acquiring 100 percent of

the voting shares of Magic Valley Bank, Twin Falls, Idaho.

Board of Governors of the Federal Reserve System, April 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–9865 Filed 4–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Commerce Bancshares, Inc., Brownsville, Tennessee; to acquire Citizens Corporation, Franklin, Tennessee, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, credit insurance, and data processing activities, pursuant to §§ 225.28(b)(1), (b)(11)(iii), and (b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, April 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–9866 Filed 4–22–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVES SYSTEM

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATES: 11 a.m., Monday, April 29, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–10100 Filed 4–19–02; 3:53 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0248]

Submission for OMB Review and Extension, GSAR 516.506, Solicitation Provisions and Contract Clause, 552.216–72, Placement of Orders Clause and 552.216–73, Ordering Information Clause

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for review and extension of the collection (3090–0248).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration's (GSA) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection that pertains to GSAR 516.506, Solicitation provisions and contract clauses and GSAR Placement of Orders Clause and Ordering Information clauses. The information collected is required by regulation. The information collected under this collection is collected through Electronic Data Interchange (EDI) in accordance with the Federal Government's mandate to increase electronic commerce. This notice indicates GSA's intent to request an extension by 3 years and to request public review and comment on the collection.

Public comments are particularly invited on: Whether the information collection required by GSAR 516. 506 and generated by the GSAR Clauses, 552.216–72, Placement of Orders and 552.216–73, Ordering Information, is necessary, to ensure FSS maximizes the use of computer-to-computer electronic data interchange (EDI) to place delivery orders; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* June 24, 2002.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW, Room 4035, Washington, DC 20405 or fax to (202) 501–5067. Please cite OMB Control Number 3090–0248.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of Federal Supply Service's (FSS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FSS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5380.
Responses for Respondent: 1.
Total Responses: 5380.
Hours Per Response: .25.
Total Burden Hours. 1, 345.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0248, Placement of Orders and Ordering Information, in all correspondence.

Dated: April 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–9933 Filed 4–22–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: ''National Study of Culturally and Linguistically Appropriate Services in Local Public Health Agencies''—New—The Office of Minority Health proposes to conduct a survey with a national sample of local health departments serving racially and ethnically diverse communities. The survey will provide data on the types of policies and practices that promote the delivery of culturally and linguistically appropriate services by local health departments, and the factors that facilitate and detract from the implementation of such policies and practices. The data collected will inform the Office of Minority Health about the current nature and extent of such services.

Respondents: Business or other for-profit, Non-profit organizations;

Number of Respondents: 150;

Response per Respondent: 3;

Average Burden per Response: 30 minutes;

Total Burden: 225 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov.* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Comments should be received within 60 days of this notice.

Dated: April 15, 2002.

Kerry Weems,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–9873 Filed 4–22–02; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), HHS.

Time and Date: 12 noon–1 p.m. EDT—April 24, 2002.

Place: Conference Call, Participants' Information to be Announced.

Status: Open.

Purpose: During this telephone conference call, the Committee will discuss its comments to the Department on the Current Notice of Proposed Rule Making Covering proposed changes to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

Notice: This conference call is open to the public using a participants' dial-in telephone number and participants' code, but access may be limited by the number of available telephone lines. The number and code will be announced on the NCVHS website *http://www.ncvhs.hhs.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/.*

Dated: April 17, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–9874 Filed 4–22–02; 8:45 am]

BILLING CODE 4151–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–43]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. CDC is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under the Fertility Clinic Success Rate and Certification Act (FCSRCA) of 1992. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton

Road, MS D–24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. OMB is expected to act on the request of CDC within 21 days of publication of this notice.

Proposed Project

Assisted Reproductive Technology (ART) Program Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background: Section 2(a) of Pub. L. 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention—(1) pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under this act.

The Centers for Disease Control and Prevention (CDC) is seeking approval of a reporting system for Assisted Reproductive Technology (ART)Program from the Office of Management and Budget (OMB). This reporting system has been designed in collaboration with the Society for Reproductive Technology to comply with the requirements of the FCSRCA. The reporting system includes all ART cycles initiated by any of the approximately 400 ART programs in the United States, and covers the pregnancy outcome of each cycle, as well as a number of data items deemed important to explain variability in success rates across clinics and across individuals. Data is to be collected through computer software developed by SART in consultation with CDC.

In developing the definition of pregnancy success rates and the list of data items to be reported, CDC has consulted with representatives of SART, the American Society for Reproductive Medicine, and RESOLVE, the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field. The average annual cost to the respondent, including data entry labor and fees, is estimated to be $2,140.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
ART Clinics	400	220	5/60	7,333
Total				7,333

Dated: April 16, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–9843 Filed 4–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies of the annual reports are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR 14.60 (c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1998, through September 30, 1999:

Center for Biologics Evaluation and Research:
- Allergenic Products Advisory Committee,
- Biological Response Modifiers Advisory Committee, and
- Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:
- Antiviral Drugs Advisory Committee,
- Arthritis Advisory Committee,
- Dermatologic and Ophthalmic Drugs Advisory Committee,
- Drug Abuse Advisory Committee, and
- Oncologic Drugs Advisory Committee.

Center for Devices and Radiological Health:
- Medical Devices Advisory Committee.

National Center for Toxicological Research:
- Science Advisory Board to the National Center for Toxicological Research.
- Science Board to the Food and Drug Administration.

Annual reports have also been filed for the following FDA advisory committees that held closed meetings during the period October 1, 1999, through September 30, 2000:

Center for Biologics Evaluation and Research:
- Biological Response Modifiers Advisory Committee,
- Blood Products Advisory Committee,
- Transmissible Spongiform Encephalopathies Advisory Committee, and
- Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:
- Antiviral Drugs Advisory Committee,
- Arthritis Advisory Committee, and
- Dermatologic and Ophthalmic Drugs Advisory Committee.

Center for Devices and Radiological Health:
- Medical Devices Advisory Committee.

National Center for Toxicological Research:
- Science Advisory Board to the National Center for Toxicological Research.

Annual reports are available for public inspection at: (1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and (2) the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–9813 Filed 4–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Title III Early Intervention Services Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year (FY) 2002 funds to be awarded under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title III Early Intervention Services (EIS) Program to support outpatient HIV early intervention and primary care services for low-income, medically underserved people in existing primary care systems. Grants will be awarded for a 3-year period.

Program Purpose: The primary goal of the EIS Program is to increase access to high quality outpatient HIV primary care for low-income, and/or medically underserved populations within existing primary care systems. All programs must have, or establish a comprehensive and coordinated continuum of outpatient HIV primary care services in targeted geographic areas as specified by the applicant. The EIS program defines comprehensive HIV primary care as that which begins with early identification services (testing and counseling), medical evaluation/clinical care, oral health care, adherence counseling, nutritional counseling, mental health, and substance abuse and includes a coordinated referral system for specialty and subspecialty care.

Program Requirements

Funded programs will be expected to provide:

(1) HIV counseling, testing, and referral;

(2) Medical evaluation and clinical care;

(3) Other primary care services; and

(4) Facilitated referrals to other health services.

Funded programs must provide the proposed services directly and/or through formal agreements with public or nonprofit private entities. A minimum of 50% of funds awarded MUST be spent on primary care services to HIV-positive individuals.

Eligible Applicants: Applications will be accepted only from current Ryan White CARE Act Title III Planning grantees. The purpose of this limited competition is to ensure that the Federal investment of funds made through the planning grantees, within these existing communities, is utilized to the fullest extent possible to develop a comprehensive primary care site for HIV services. These current Planning grantees were previously selected by an open and competitive process and approved to plan for the establishment of comprehensive HIV services. Applicants must be public or private non-profit entities. Faith-based and community-based organizations are eligible to apply.

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved communities where HIV primary health care resources, including financial resources available from the Ryan White CARE Act, remain insufficient to meet the need for HIV primary care services.

Authorizing Legislation: The EIS Program is authorized by the Public Health Service (PHS) Act, as amended by Public Law 106–345, the Ryan White CARE Act Amendments of 2000 (42 U.S. Code 300–71).

Availability of Funds: The program has approximately 6 million dollars available for this initiative. HRSA expects to fund approximately 20 programs for 3 years. The budget and project periods for approved and funded projects will begin on or about September 1, 2002. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Application Deadline: Applications must be received in the HRSA Grant Application Center (GAC) at the address below by the close of business June 21, 2002. All applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Obtaining Application Guidance and Kit: You may access the program guidance alone on HRSA's web site at *www.hrsa.hab.gov/grants.html.*

The official grant application kit and program guidance materials for this announcement may be obtained from the HRSA Grants Application Center, 901 Russell Avenue Suite 450, Gaithersburg, MD 20879, Attn: CFDA 93.918B; telephone 1–877–477–2234; e-mail address *HRSA.GAC@hrsa.gov.*

FOR FUTHER INFORMATION CONTACT: Additional information related to the program may be requested by contacting the Title III Primary Care Services Branch at (301) 443–0735.

Dated: April 16, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–9814 Filed 4–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713.

The following is a list of Indian Health Scholarship Recipients funded under Sections 103 and 104 for Fiscal Year 2001:

Abeita, Lynn Ann, Arizona State University, Pueblo of Isleta, NM

Abeita, Steven John, University of New Mexico-Albuquerque, Pueblo of Isleta, NM

Adams, Andrea L., University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT

Alexander, Andrea Lynn, University of Central Oklahoma, Seminole Nation of Oklahoma

Alexander, Lise Kalliah, University of Washington School of Medicine, Confederated Tribes of the Grand Ronde Community of Oregon

Allery, Cynthia Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota

Allery, Lonnie William, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota

Allison, Rochelle Jade, Arizona State University, Navajo Tribe of AZ, NM, & UT
Alonzo, Pearl Ann, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Anagal, Laura Ann, Northland Pioneer College, Navajo Tribe of AZ, NM, & UT
Anderson, Ella Mae, Gateway Community College, Navajo Tribe of AZ, NM, & UT
Anderson-McMillan, Tarina Kay, University of Southern Mississippi, Mississippi Band of Choctaw Indians, MS
Arnold, Delphine, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Arredondo, LaDonna Leann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Arviso, Angela, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Ashley, Jeannette, New Mexico State University-Albuquerque, Navajo Tribe of AZ, NM, & UT
Ashley, Natalie Lynn, Arizona State University, Navajo Tribe of AZ, NM, & UT
Baca, Vonda Jean, Albuquerque Tech-Voc Institute, Pueblo of Jemez, NM
Baca, Wilma Joyce, Albuquerque Tech-Voc Institute, Pueblo of Jemez, NM
Bacoch, Michaele, University of the Pacific School of Pharmacy, Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, CA
Bailor, Jeanne Lesley, Bartlesville Wesleyan College, Cherokee Nation, Oklahoma
Bain, Edlin David, University of New Mexico College of Pharmacy, Navajo Tribe of AZ, NM, & UT
Baker, Andrea Monique, University of North Dakota, Muskogee (Creek) Nation, Oklahoma
Barnes, Kellie Elizabeth, University of Oklahoma, Chickasaw Nation, Oklahoma
Barnes, Rebecca Anne, Northeastern State University, Cherokee Nation, Oklahoma
Bartholomew, Michael Lee, Dartmouth Medical School, Kiowa Indian Tribe of Oklahoma
Bates, Vanesscia, Washington University, Navajo Tribe of AZ, NM, & UT
Bearmedicine, Jennifer Lynn, Salish-Kooteenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Becenti, Deann Lynn, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Bedoni, Theda, Scottsdale Community College, Navajo Tribe of AZ, NM, & UT
Begay, Lorena Rose, La Sierra University, Navajo Tribe of AZ, NM, & UT
Begay, Michelle, University of Arizona, Navajo Tribe of AZ, NM, & UT
Begay, Mirielle Rose, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Paula Moiselle, Weber State University, Navajo Tribe of AZ, NM, & UT
Begay, Pierrette Rose, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Begay, Tamana Dollicia, University of the Pacific, Navajo Tribe of AZ, NM & UT
Begaye, Dorothea Tricia, Albuquerque Tech-Voc Institute, Navajo Tribe of AZ, NM, & UT
Behymer, Virginia May, University of Alaska-Anchorage, Aleut, AK
Benally, Annisa, New Mexico Highland University, Navajo Tribe of AZ, NM, & UT
Benally, Yolanda Jean, New Mexico State University, Navajo Tribe of AZ, NM, & UT
Berquist, Melissa Dawn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Berryhill-Baker, Tishanda Leigh, University of Utah College of Medicine, Muskogee (Creek) Nation, Oklahoma
Bessette, Megan Holly, Whitman College, White Mountain Apache Tribe of the Fort Apache Reservation, AZ, Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), OK
Betonie, Darlene Smith, University of Minnesota School of Nursing, Navajo Tribe of AZ, NM, & UT
Beyale, Justina, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Bighorn, Lisa Elaine, University of Denver, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Bighorn, Prairie Rose, Rocky Mountain College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Billy, Matilda, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Bingham, Zachary Scott, University of New Mexico-Albuquerque, Cherokee Nation, Oklahoma
Blackwolf, Kerrie Ann, Rose State College, Cheyenne-Arapaho Tribes of Oklahoma
Boloz, Angelita Colleen, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Booth, Loretta Marie, Pacific University College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Boyd, Cassandra Iva, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Bradley, Stephanie, East Carolina University School of Medicine, Eastern Band of Cherokee Indians of North Carolina
Brantingham, Michael James, Pacific Union College, Eskimo
Breland, Kylie Lea, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Briggs, Misty Elaine, Northeastern State University, Cherokee Nation, Oklahoma
Brinson, Timothy James, East Central University, Citizen Potawatomi Nation, Oklahoma
Brooks-Dugger, Shelly Beth, Southwest Texas State University, Cherokee Nation, Oklahoma
Brosel, Conrad Carl, Cardinal Stritch University, Oneida Tribe of Wisconsin
Brown, Christina Ann, University of California-San Diego, Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, CA
Brown, Gerald Ray, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Brown, Laverne, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Bruce-Gallardo, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Bryant, Idella Marie, Midwestern University, Cherokee Nation, Oklahoma
Bryant, Joseph Preston, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma Buenting, Lisa Lynette, Loma Linda University, Mesa Grand Band of Diegueno Mission Indians of the Mesa Grande Reservation, CA
Bullard, Averna Lee, Indian University/ Purdue University, Lumbee
Burk, Kristi Carroll, Fort Lewis College, Alaska Native
Burris, Brandon Christopher, University of Texas-Austin, Caddo Indian Tribe of Oklahoma
Burton, Marlette Alyce, Pima Community College, Navajo Tribe of AZ, NM, & UT
Busch, Richard Eugene, University of Alaska-Fairbanks, Alaska Native
Butterfly, Glenn Curtis, Pima Medical Institute, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Cain, Marcia Lynnette, University of Montana School of Pharmacy, Sitka Tribe Community Association
Calf Looking, John Fitzgerald, University of Washington Medex

Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calf Robe, Douglas Wayne, University of Washington Medex Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calvin, Shawn Allen, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Calvin-Salyer, Amber Lorine, Oklahoma State University, Choctaw Nation of Oklahoma
Campbell, Gabriel Antonio, University of North Dakota, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Campbell, Jamie Renae, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Carlson, Ingrid Marie, University of Washington Medex Northwest Program, Qagan Tayagungin Tribe of Sand Point Village
Carter, Jason Daniel, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Cary, Brenda Lee, University of Minnesota-Twin Cities Medical School, Oneida Tribe of Wisconsin
Cavanaugh, Casey Lynne, Idaho State University, Shoshone-Paiute Tribes of the Duck Valley Reservation, NV
Charles, Tracey Roseann, University of Tennessee-Memphis, Choctaw Nation of Oklahoma
Chastain, Brian Gene, East Central University, Muskogee (Creek) Nation, Oklahoma Chatter, Teddy Duke, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Chavez, Leann Ahkeebah, University of New Mexico-Alburquerque, Navajo Tribe of AZ, NM, & UT
Chee, Darlene Begay, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Childless, Michelle Josett, University of Central Oklahoma, Seminole Nation of Oklahoma
Chimoni, Reinette J., University of New Mexico-Gallup, Zuni Tribe of the Zuni Reservation, NM
Clark, Dorrance Dean, University of Michigan, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Clark, Kari Rose, Mesa Community College, Navajo Tribe of AZ, NM, & UT
Cole, Jennifer Lyn, University of Oklahoma, Choctaw Nation of Oklahoma
Collins, Aaron Bradley, Oklahoma Baptist University, Citizen Potawatomi Nation, Oklahoma
Cook, Ellen Maxine, University of Vermont, St. Regis Band of Mohawk Indians of New York
Cooper, April Deann, University of Central Arkansas, Cherokee Nation, Oklahoma
Cooper, Benjamine Dale, Northeastern State University, Cherokee Nation, Oklahoma
Corley, Ethelinda Whitey, San Juan Community College, Navajo Tribe of AZ, NM, & UT
Corson, Hillary Lena, Montana State University-Bozeman, Crow Tribe of Montana
Cree, Sharon, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Croley, Amanda Jo, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Cromer, Kelly Jenise, Southwestern Oklahoma State University, Cheyenne-Arapaho Tribes of Oklahoma
Culver-Blackbear, Jennifer Lyn, Northeastern State University, Cherokee Nation, Oklahoma
Cummings, James Jackson, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Cunningham-Hartwig, Roxie Kim, University of Washington School of Medicine, Nez Perce of Idaho
Curley, Florinda, Grand Canyo College, Navajo Tribe of AZ, NM & UT
Dailey, Samuel, University of Alabama-Birmingham, Navajo Tribe of AZ, NM & UT
Daughterty, Jamie Suzette, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Davis, Allison Kay, University of North Dakota, Crow Creek Sioux Tribe of the Crow Creek Reservation, SD
Davis, Amber Lynn, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Davis, Cheron Lea, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Jason Russell, Lane Community College, Chickasaw Nation, Oklahoma
Dawes, Kari Elaine, University of Iowa, Cherokee Nation, Oklahoma
Dean, Erica Rae, Oklahoma State University, Choctaw Nation of Oklahoma
Decoteau, Chrystal Dawn, Rocky Mountain College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Decoteau, Michelle Germaine, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Dele, Lessina, Midwestern University, Navajo Tribe of AZ, NM, & UT
Delgado, Jamael Theresa, Northern Arizona University, Navajo Tribe of AZ NM, & UT
Delgado, Jamael Theresa, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Delmar, Marjorie, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Delment, Rachael Leah, Emory University School of Medicine, Oglala Sioux Tribe of the Pine Ridge Reservations, SD
Denson, Kent Douglas, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma
Deshnod, Sheilah A., University of Oklahoma Health Sciences Center, Navajo Tribe of AZ, NM, & UT
Detmer, Sandra Joy, Modesto Junior College, Turtle Mountain Band of Chippewa Indians of North Dakota
Dineyazhe, Dawn Capri, Norther Arizona Tribe of AZ, NM, & UT
Dixon, Damon Brian, University of North Dakota, Hopi Tribe of AZ
Dixon, Missena Elizabeth, University of Oklahoma, Seminole Nation of Oklahoma
Elder, Shirley-Anne, Northern Montana College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Edwards, Kerry Rachelle, University of Oklahoma, Cherokee Nation, Oklahoma
Edwards, Ralph Casey, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Elliott, Billy Wayne, Northern Arizona University, Wyandotte Tribe of Oklahoma
Ellis, Scott Anthony, Oklahoma City, University, Cherokee Nation, Oklahoma
Emerson, Janice Odette, University of Oklahoma Health Sciences Center, Kiowa Indian Tribe of Oklahoma
Eriacho, Margaret Alisha, University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Esalio, Stacy Gwen, University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Evans-Kipp, Crystal Rose, University of North Dakota, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Fayer, Kayleen Coupchiak, University of Alaska, Traditional Village of Togiak
Fingerlin-Goodman, Nancy Ellen, University of Olahoma, Chickasaw Nation, Oklahoma
Fisher, Joe Keith, University of New Mexico, Choctaw Nation of Oklahoma
Fleming, Stephani Rose, University of Wyoming, Turtle Mountain Band of Cippewa Indians of North Dakota
Fragua, Kari Lynn, University of New Mexico-Albuquerque, Pueblo of Jemez, NM
Francis, Kaydee Ann, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT

Francis, Molly Marie, Creighton University, Confederated Tribes of the Colville Reservation, WA
Franklin, Richard Arnold, Northeastern State University, Cherokee Nation, Oklahoma
Frazier, Sonya Robin, East Central Oklahoma State University, Chickasaw Nation, Oklahoma
Fred, Alana Renee, University of Arizona, Navajo Tribe of AZ, NM, & UT,
Fredy, Jefferson, University of New Mexico College of Pharmacy, Navajo Tribe of AZ, NM, & UT
Freeman, Michael Scott, University of the Health Sciences College of Osteopathic Medicine, Cherokee, Nation, Olahoma
Freeman, Ryan Matthew, University of Oklahoma Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Frigerio, Sonya Renee, University of New Mexico-Gallup, Choctaw Nation of Oklahoma
Fryear Carrie Marie, Southwestern Oklahoma State University, Chickasaw Nation, Oklahoma
Gaddy, Jasmine Reanna, Temple University School of Medicine, Navajo Tribe of AZ, NM, & UT
Gamble, Wanda, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Garness, Mary, University of Wisconsin-Superior, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Garza, Jolanda Evelyn, East Central Oklahoma State University, Pueblo of Jenez, NM
George, Margie Ann, Northland Pioneer College, Hopi Tribe of AZ
Gerry, Jon Michael, Stanford University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Gerry, Ryan Richard, MacAlester College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Glasses, Devin Garrick, University of Arizona, Navajo Tribe of AZ, NM, & UT
Glock, Jacquelyn, Southwest Missouri State University, Choctaw Nation of Oklahoma
Gloshay, Jr., Eddie, University of Arizona, White Mountain Apache Tribe of the Ft. Apache Reservation, AZ, Wichita and Affilated Tribes (Wichita, Keechi, Waco & Tawakonie), OK
Goldtooth, Renee Ryan, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Goodman Gayla Beth, University of Maryland School of Medicine, Kickapoo Tribe of Oklahoma
Gratz, Addie Beth, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma
Gary, Cori Ann, University of Oklahoma Health Sciences Center, Osage Tribe, Oklahoma
Gray, Jason Charles, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Gray, Jennifer Anne, University of Oklahoma Health Sciences Center, Osage Tribe, Oklahoma
Griffith, Kimberly Dawn, Grand Canyon University, Tohono O'odham Nation of Arizona
Guin, Heather Elaine, University of Tulsa, Muskogee (Creek) Nation, Oklahoma
Gust, Kateri Lyn, Montana State University School of Nursing, Crow Tribe of Montana
Hagerty, Kori Lynn, University of New Mexico-Albuquerque, Blackfeet Tribe of the Blackfeet Indian Reservations of MT
Hall, Brian Patrick, University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Hall, Megan Sue, Northeastern State University, Choctaw Nation of Oklahoma
Hall, Raquel Ellen, University of California-Davis, Coastal Bank of the Chumash Nation
Harjo, Rebecca Ruth, University of Southern California School of Social Work, Muskogee (Creek) Nation, Oklahoma
Harnage, Julie Ann, University of Cental Oklahoma, Cherokee Nation, Oklahoma
Harris, Elizabeth Kate, Oklahoma State University College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Harrison, Geniel, University of North Dakota, Confederated Tribes of the Goshute Reservation, NV and UT
Haukass, Nicole Marie, Creighton University College of Nursing, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Hawkins, Amy Delah, Tulane University Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Hayes-Coons, Jennifer, Lynn, Har-Bor Jones School of Nursing, Cherokee Nation, Oklahoma
Hearod, Karen Elaine, University of Oklahoma School of Social Work, Choctaw Nation of Oklahoma
Henderson, Traci Nicole, University of Great Falls, Chippewa-Cree Inidians of the Rocky Boy's Reservation, MT
Henio, Regina, University of New Mexico-Gallup, Navajo, Tribe of AZ, NM, & UT
Henry, Abraham John, Augsburg College, Turtle Mountain Band of Chippewa Indians of North Dakota
Henry, Liza Jo, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Henson-Meigs, Amy Jo, University of Tulsa, Cherokee Nation, Oklahoma
Henson-Sammuels, Andrea Jean, Northeastern Oklahoma State University, Cherokee Nation, Oklahoma
Hernandez, Eveylyn Leone, Walla Walla College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Hewlett, Lori, Araphao Community College, Navajo Tribe of AZ, NM, & UT
Hick, Carrie, University of New Mexico College of Pharmacy, Navajo, Tribe of AZ, NM, & UT
Hisaw, Tasha Leann, University of Oklahoma Health Sciences Center Chickasaw Nation, Oklahoma
Holland, Toni Jean, Montana State University-Billings, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Holman, Colin Justin, University of Oklahoma, Chickasaw Nation, Oklahoma
Holmes, Michael Sterling, East Central Oklahoma State University Cheyenne-Arapaho Tribes of Oklahoma
Honaberger, David Anthony, University of Puget Sound, Pueblo of San Juan, NM
Hoover, Jamie Ellen, Arizona School of Health Sciences, Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Horse, Lorena Dawn, University of Utah School of Social Work, Confederated Tribes of the Goshute Reservation, NV and UT
Houston, Lindsay Nicole, Bacone College, Cherokee Nation, Oklahoma
Howeya, Lori Ann, University of New Mexico, Pueblo of Acoma, NM
Howling Wolf, William L., University of North Dakota, Three Affiliated Tribes of the Ft. Berthold Reservation, ND
Huber, Donna Marie, University of Phoenix, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Huerth, Benjamin Walter, University of Maine, Winnebago Tribe of Nebraska
Hulse, Hailey Vonn, Truman State University, Osage Tribe, Oklahoma
Hunt, Matthew Hensdale, North Carolina State University, Lumbee
Hyatt, Jacqueline Rooke, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Hyden, Andreana Dee, Grand Canyon College, Navajo Tribe of AZ, NM, & UT
Imperial, Jessica Ladonna, Coconino County Community College, Navajo Tribe of AZ, NM, & UT
Ingram, Sonya Lynn, Connors State College, Cherokee Nation, Oklahoma

Interpreter, Christina Lynn, Northern Arizona University, Hopi Tribe of AZ
Ivanoff, Nora Rose, University of Washington, Eskimo
James, Jessica Natasha, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Jefferson, Natalie Ruth, University of Kansas School of Social Welfare, Choctaw Nation of Oklahoma
Jensen, Janelle Blake, University of Arizona, Navajo Tribe of AZ, NM, & UT
Jensen, Vanessa, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Johnson, Jason Ray, University of North Dakota, Cherokee Nation, Oklahoma
Johnson, Kevin Lee, Weber State University, Navajo Tribe of AZ, NM, & UT
Johnson, Roxanne Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Johnson, Tara Lee, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Joice, Kelly A., University of Oklahoma, Cherokee Nation, Oklahoma
Joines, John Clifford, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Jones, Bernadine Rose, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Jones, Christopher Lee, Univesity of North Dakota, Cherokee Nation, Oklahoma
Jones, Generosa Diane, Drake University College of Pharmacy, Choctaw Nation of Oklahoma
Jones, Julia M., Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Jones, Myles Randall, University of Nebraska College of Medicine, Choctaw Nation of Oklahoma
Jordan, Michael James, Washington State University, Confederated Tribes of the Colville Reservation, WA
Julian, Serena Yazzie, University of New Mexico College of Pharmacy, Navajo Tribe of AZ, NM, & UT
Juneau, Rose Ann, Salish-Kootenai Community College, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Kanawite, Freida Mae, Albuquerque Tech-Voc Institute, Navajo Tribe of AZ, NM, & UT
Kanuho, Verdell, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Kardonsky, Kimberly Jay, Medical College of Wisconsin, Jamestown S'Klallam Tribe of Washington
Kelley, Harlan Hunt, Southern Illinois University School of Medicine, Cherokee Nation, Oklahoma.
Kelley Ralph Zane, University Health Sciences College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Kelliher, Allison Miranda, University of Washington School of Medicine, Nome Eskimo Community
Kennedy, Jamie Sue University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Kenneth Lena Mae, Arizona State University, Navajo Tribe of AZ, NM, & UT
Kinlecheenie, Orlinda Lou, Northland Pioneer College, Navajo Tribe of AZ, NM, & UT
Kinney, Sahar Amelia, Tufts University, Turtle Mountain Band of Chippewa Indians of North Dakota
Kipp, Barbara Malia, Salish Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Kirk, John Vincent, Oklahoma State University College of Osteophatic Medicine, Cherokee Nation, Oklahoma
Kitto, Laurie Dale, Strayer University, Choctaw Nation of Oklahoma
Krulish, Arliss Mary, University of North Dakota, Spirit Lake Tribe, ND
Krulish, Arlene Marie, University of North Dakota, Spirit Lake Tribe, ND
Lamere, Jennifer Jo, University of Oklahoma Health Sciences Center, Winnebago Tribe of Nebraska
Landers, Joseph Henry, East Central University, Muskogee (Creek) Nation, Oklahoma
Lansing, Letitia Bianca, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM & UT
Large, Stephanie Ashley, University of Oklahoma School of Social work, Muskogee (Creek) Nation, Oklahoma
Large, Dinah Mae, San Juan College, Navajo Tribe of AZ, NM, & UT
Laurence, Stacie, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Laurence-Leslie, Faith Hope, Arizona State University, Navajo Tribe of AZ, NM, & UT
Lawhorn, William Andrew, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Lawrence, Gary Lynn, Carl Albert State College, Choctaw Nation of Oklahoma
Lawrence, Heather L., University of North Dakota, Spirit Lake Tribe ND
Lay Pamela Christine, Yakima Valley Community College, Muskogee (Creek) Nation, Oklahoma
LeBeau, Michael Edward, University of North Dakota, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Lee, Calbert Aaron, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Lee, Lori C., North Arizona University, Navajo Tribe of AZ, NM, & UT
Lee, Marjorie Mae, Diné College, Navajo Tribe of AZ. NM, & UT
Leemhuis, Stephanie Brook, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Lessert, Amanda Kaye, Creighton University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Lewis, Erik Clay, Salish-Kootenai Community College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Lewis, Rusty Oswald, University of North Dakota, Spirit Lake Tribe, ND
Lincoln, Kelly Michelle, Boston College, Navajo Tribe of AZ, NM, & UT
Long Lorenda T., University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Long, Melanie, New Mexico State University, Navajo Tribe of AZ, NM, & UT
Long, Piper Lynn, University of Tulsa, Osage Tribe, Oklahoma
Long, Terri Leigh, Excelsior College, Cheyenne-Arapaho Tribes of Oklahoma
Longbrake, Guy Brady, Black Hills State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Longie, Michelle Renee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Looney, Joshua Carson, University of Oklahoma, Cherokee Nation, Oklahoma
Lopez-Martin, Tanya Elizabeth, University of Kansas School of Social Welfare, Pueblo of Pojoaque, NM
Lowe, Loretta, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Lucke, Bobbi, Montana State University, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Luebke, Jeneile Marie, University of Wisconsin-Madison, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Mahooty, Stephanie Juliet, Arizona State University, Zuni Tribe of the Zuni Reservation, NM
Malaterre, Jessica Kim, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Mallon, Nicole Elizabeth, Springfield College, Cherokee Nation, Oklahoma
Mariano, Karoline Shirley, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Martin, Candelaria Cynthia, University of North Dakota, Navajo Tribe of AZ, NM, &UT
Martine, Cynthia Ann, University of North Dakota, Jicarilla Apache Tribe

of the Jicarilla Apache Indian Reservation, NM
Martinez, Marie Jeannette, Weber State University, Navajo Tribe of AZ, NM, & UT Mason, Laquita Joy, University of Montana State School of Pharmacy, Three Affiliated Tribes of the Ft. Berthold Reservation, ND
Mathis, Trina C., University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Matt, Georgia Lee, University of Utah, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Maxon, Jeff Allen, North Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
McCarthy, Vincent Paul, Cameron University, Comanche Indian Tribe, OK
McCuistion, Robin Edward, Western Washington University, Aleut, AK
McGhee, Julie Lynette, University of Oklahoma Health Sciences Center, Poarch Band of Creek Indians of Alabama
McGilbary, Kristie Rae, Seminole State College, Kiowa Indian Tribe of Oklahoma
McGillis, Jessica Therese, Minot State College, Turtle Mountain Band of Chippewa Indians of North Dakota
McGlothin, Travis Michael, Harvard Medical School, Pueblo of Laguna, NM
McKerry, Jason Amel, Grand Canyon College, Navajo Tribe of AZ, NM, & UT
McLain, Stefanie Jeanne, Oklahoma State University, Cherokee Nation, Oklahoma
McLaughlin, Audrey Jane, Central Oregon Community College, Yurok Tribe of the Yurok Reservation, California
Menz, Dore Lee, Pacific University, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Merchant, Nicole Dawn, Montana State Universty School of Nursing, Crow Tribe of Montana
Miles, Mary Kristen, Northern Oklahoma College, Osage Tribe, Oklahoma
Milford, Ginalori, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Mitchell, Jessica Delphine, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Momberg, Christina Ann, Salish-Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Montano, Alicia Dawn, University of Arizona-Tucson, Navajo Tribe of AZ, NM, & UT
Montoya, Danny Dave, University of Alaska School of Nursing, Navajo Tribe of AZ, NM, & UT
Moore, Jennifer Marie, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM & UT
Moore, Mark Wilburn, University of Texas SW Medical Center-Dallas, Cherokee Nation, Oklahoma
Morgan, Collandra Karen, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Morris, Elizabeth Lynette, University of Oklahoma Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Morrison, Gerlinde Maria, University of Montana, Crow Tribe of Montana
Mousseau, Francine Louise, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Murphy, Tamelot Lynne, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Murray, Ais Kerry William, University of Colorado, Shoshone Tribe of the Wind River Reservation, Wyoming
Muskett, Eunice Annazbah, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Naasz, Katrina Hillary, University of Colorado, Navajo Tribe of AZ, NM, & UT Namingha, Emergy, Albuquerque Tech-Voc Institute, Zuni Tribe of the Zuni Reservation, NM
Needham, Laura L., Shoreline Community College, Aleut, AK
Nelson, Shannon Lynn, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Nephew-Kennedy, Lesley Ellen, SUNY at Buffalo School of Social Work, Seneca Nation of New York
Nez, Lula, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Nicholson, Kasey Joseph, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Nidiffer-Shelor, Amber Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
Nimsey, Dallas Micah, St. Gregory's College, Kiowa Indian Tribe of Oklahoma
Nioce, Paul Anthony, Washburn University, Citizen Potawatomi Nation, Oklahoma
Noisy Hawk, Lynelle Nancy, University of South Dakota School of Medicine, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Northbird, Stephanie Mae, United Tribes Technical College, Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Norton, Elizabeth Marie, Eastern Oregon University, Confederated Tribes of the Siletz Reservation, OR
Okleasik, Sara A., Pacific University, Nome Eskimo Community
Olic, Latona Michelle, University of Wyoming School of Pharmacy, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Olson, Jeremy Christ, University of North Dakota, Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
O'Neal, Jamie Diane, Northern State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Orosco, Mary A., Antioch College, Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Ortiz, Lisa Dianne, Wayne State University School of Medicine, Cherokee Nation, Oklahoma
Owens, Johnie Louis, Kirksville College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Pack, Bruce Anthony, University of Louisiana-Monroe, Cherokee Nation, Oklahoma
Palacol, Christie Kahikuonalani, University of Oklahoma, Comanche Indian Tribe, OK
Palm, Toby James, Pacific University College, Cherokee Nation, Oklahoma
Paniagua, Calvin Frederick, Arizona School of Health Sciences, Little Traverse Bay Bands of Odawa Indians of Michigan
Pappan, Cynthia Rae, Creighton University School of Pharmacy, Turtle Mountain Band of Chippewa Indians of North Dakota
Parisien-Marion, Shannon Ronette, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Parker, Andrienne, Arizona State University, Navajo Tribe of AZ, NM, & UT
Pearce, Judy Lynn, University of Oklahoma Health Sciences Center, Seminole Nation of Oklahoma
Peltier, Aleta Jeanne, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Peltier, Crystal Gayle, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Penn, Tamara Leigh, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Peone, Amanda Lee, Salish-Kootenai Community College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT

Perdue, Mark Wayne, University of Oklahoma, Cherokee Nation, Oklahoma
Peterson-Lewis, Annie May, Rose State College, Aleut, AK
Pewenofkit, Rowena Jolene, University of Central Oklahoma, Kiowa Indian Tribe of Oklahoma
Phillips, Crystal Lea, University of Oklahoma, Cherokee Nation, Oklahoma
Phillips, Starla Jean, Bacone College, Cherokee Nation, Oklahoma
Pleasants, Tina Marie, Spokane Falls Community College, Central Council of the Tlingit & Haida Indian Tribes
Poolaw, Audrew Winnie, Southwestern Oklahoma State University, Comanche Indian Tribe, OK
Quan, Zellisha Alexis, University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Quilt, Lucille Arlene, North Seattle Community College, Quinault Tribe of the Quinault Reservation, WA
Quoshena, Tanya Cojomana, University of Phoenix, Hope Trie of AZ
Radney-Veinote, Ruth W., University of the Pacific, Comanche Indian Tribe, OK
Red Elk, Linsey Beth, Arizona State University, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Redsteer, Sandra Jeanette, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Reed, Stephanie Levern, University of Central Oklahoma, Cherokee Nation, Oklahoma
Renfrow, Miranda Kirstin, Northeastern State University, Choctaw Nation of Oklahoma
Reynolds, Joel Wayne, University of South Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Rhynes, Lisa Ann, University of Oklahoma Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Riley, Gail Arlene, Albuquerque Tech-Voc Institute, Pueblo of Nambe, NM
Robinson, Charlene, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Robison-Rivera, Kristie Marie, Southwestern Oklahoma State University, Apache Tribe of Oklahoma
Robnett, Randall Clifton, Southern Nazarene University, Cherokee Nation, Oklahoma
Rogers, Brandon Scott, Northeastern State University, Cherokee Nation, Oklahoma
Rogers, Shawn Thomas, University of Oklahoma, Cherokee Nation, Oklahoma
Ross, Cindy Lee, Arizona State University, Hope Tribe of AZ
Rouse, Brant Philip, University of Oklahoma, Cherokee Nation, Oklahoma
Rucker, Jennifer Ann, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Ruleford, Miranda Louisa, University of Tulsa, Cherokee Nation, Oklahoma
Russell, Candice Dawn, University of Missouri-Kansas City, Cherokee Nation, Oklahoma
Rutman, Kristi Arlene, University of Anchorage, Central Council of the Tlingit & Haida Indian Tribes
Saltclah, Waleste Maria, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Sandoval, Racheal Michele, Arizona State University, Navajo Tribe of AZ, NM, & UT
Scalpcane-Moore, Lavonne Jean, Salish-Kootenai Community College, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Schmidt, Erin Michele, Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Schroeder, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Scott, Brian Edward, University of Tulsa, Cherokee Nation, Oklahoma
Scott, Jessica Robin, University of Washington, Central Council of the Tlingit & Haida Indian Tribes
Scott, Steven Ray, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Seaton, Evelyn J. Crank, New Mexico Highland University, Navajo Tribe of AZ, NM, & UT
Seyler, Debra Jean, Northland Pioneer College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Shane, Allison Doreen, South Dakota State University, Alaska Native
Shangreau-Pilcher, Rhiannon Brook, South Dakota State University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Shepard, Cristopher Allan Joseph, Pomona College, Santee Sioux Tribe of the Santee Reservation of Nebraska
Sherwood, David William, University of Oklahoma, Eastern Shawnee Tribe of Oklahoma
Shields, Deborah, East Central Oklahoma State University, Prairie Ban of Potawantomi Indians, Kansas
Shinn-Jones, Darcy Marie, Northeastern State University, Cherokee Nation, Oklahoma
Shirley, Lenora Jean, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Shunkamolah, William Henry, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Silvers, Kristin Gail, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Simmons, Jeremiah David, Stanford University, Yankton Sioux Tribe of South Dakota
Sirmans, Jayna Deneice, University of Houston College of Optometry, Choctaw Nation of Oklahoma
Skan, Eric Christopher, Washington State University College of Pharmacy, Ketchikan Indian Corporation
Skippergosh, Brenda Teller, Pima Medical Institute, Menominee Indian Tribe of Wisconsin
Sloan, Rick Michael Wesley, University of Colorado, Cherokee Nation, Oklahoma
Smith, Dallas Rockford, Grand Canyon College, Navajo Tribe of AZ, NM, & UT
Smith, Phyllis Marie, Salish-Kootenai Community College, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Spotted Horse, Patricia Jean, American University, Standing Rock Sioux Tribe of N. & S. Dakota
Spurlock, Cory Stephen, University of Oklahoma Health Sciences Center, Citizen Potawatomi Nation, Oklahoma
St. Claire, Billie Jo, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota
St. Claire, Rhea Neachet, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Stewart, Daryl Lee, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Stour, Lana Dawn, Oklahoma State University, Cherokee Nation, Oklahoma
Strobbe, Vonne Kay, University of New Mexico-Albuquerque, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Stuck, Andrew Timothy Lewis, University of Arizona, Navajo Tribe of AZ, NM, & UT
Stump-King, Glynna Marie, University of New Mexico-Gallup, Chippewa Cree Indians of the Rocky Boy's Reservation, MT
Summerlin, Allen William, University of the Pacific, Cherokee Nation, Oklahoma
Sun Rhodes, Neil Altair, Oregon Health Sciences University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Sweeney, Michael Aaron, Brigham Young University, Choctaw Nation of Oklahoma
Swensen, Eric Carl, University of North Dakota, Aleut, AK
Taylor, Jennifer Elise, Eastern Oregon State College, Pit River Tribe,

California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Teasyatwho, Arlene Jean, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Teller, Pamela, Arizona State University, Narraagansett Indian Tribe of Rhode Island
Teller, Terry Lee, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Tempel, Dollie Luna, Montana State University School of Nursing, Navajo Tribe of AZ, NM, & UT
Tenequer, Valerie Leigh, Gateway Community College, Navajo Tribe of AZ, NM, & UT
Thomas, Jacob Frederick, Concordia College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thomason-Chavez, Felecia Elena, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Thompson, Benjamin Campbell, Northeastern State University, Cherokee Nation, Oklahoma
Thompson, Karen Lynn, Arizona State University, Navajo Tribe of AZ, NM, & UT
Thompson, Paula Gail, Grand Canyon College, Navajo Tribe of AZ, NM, & UT
Thompson-Lookingback, Bret R., University of Minnesota-Duluth, Minnesota Chippewa Tribe, Minnesota (Six component reservations; Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Tobacco, Romaine Leigh, Oglala Lakota College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Topsky, Elizabeth Marie, University of Washington School of Medicine, Chippewa-Cree Indians of the Rocky Boy's Reservation, MT
Torralba, Vernon Charles, United Tribes Technical College, Crow Tribe of Montana
Torres, Michelle Lynn, Heritage College, Chippewa-Cree Indians of the Rocky Boy's Reservation, MT
Toya, Tirzah Marie, University of New Mexico-Albuquerque, Pueblo of Laguna, NM
Treas, Theresa Wileen, New Mexico State University, Mescalero Apache Tribe of the Mescalero Reservation, NM
Tsethlikai, Tami-Denice, Albuquerque Tech-Voc Institute, Zuni Tribe of the Zuni Reservation, NM
Tsethlikia, Nina Marie, University of Phoenix, Zuni Tribe of the Zuni Reservation, NM
Tsingine, Georgia Lynn, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Tso, Shawmarie, Pueblo Community College, Navajo Tribe of AZ, NM, & UT
Tunnell, Kimberly Renee, Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Turney, Jarett Brandon, San Francisco State University, Cherokee Nation, Oklahoma
Upshaw, Juliana, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Uttchin, Venus, University of Oklahoma, Muskogee (Creek) Nation, OK
Vaile, Marnie Lynn, Montana State University, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Valdo, Gerald David, Colorado State University, Pueblo of Acoma, NM
Vallie-Merriefield, Pamela Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Vargas, Raquel Ann, University of Texas Medical Branch-Galveston, Choctaw Nation of Oklahoma
Walker, Jonathan Bayless, Oklahoma Christian College, Choctaw Nation of Oklahoma
Wallace, Kacey Leann, Oklahoma State University College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Walton, Amber Nicole, Washington University, Navajo Tribe of AZ, NM, & UT
Waquie, Monica Janet, New Mexico Highlands University, Pueblo of Jemez, NM
Wartz, Kaye Ellen, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Watford, Velma Jean, Pima Community College, Navajo Tribe of AZ, NM, & UT
Watson, Matthew Mendioro, Columbia University College of Physicians & Surgeons, Ottawa Tribe of Oklahoma
Wells, Elmer Bruce, North Dakota State University, Three Affiliated Tribes of the Ft. Berthold Reservation, ND
Weston-Traversie, Marnie Lee, Nevada College of Pharmacy, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
White, Richard Kalvin, University of Utah, Navajo Tribe of AZ, NM, & UT
White, Ruth Ellen, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
White, Sidney John, Marquette University, Oneida Tribe of Wisconsin
White, Tammy Jean, University of Buffalo, Seneca Nation of New York
Whited, Stephanie Lynn, University of Southern Mississippi, Nenana Native Association
Whitehair, Jennifer June, University of North Dakota, Navajo Tribe of AZ, NM, & UT
Whitehair, Rosalita Marie, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Wilcox, Amelia Mae, University of Phoenix, Navajo Tribe of AZ, NM, & UT
Wilkerson, Thaddus Donavan, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Willcuts, Peggy Sue, South Dakota State University, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Willeto, Virginia, University of New Mexico-Gallup, Navajo Tribe of AZ, NM, & UT
Williams, Alice, Coconino County Community College, Navajo Tribe of AZ, NM, & UT
Williams, Rhonda Lynette, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Willman, Peggy Ann, University of Alaska, Native Village of Ambler
Wilson, Dena Lynn, University of Washington School of Medicine, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Wilson, Ladonna Jean, Eastern Oklahoma State College, Cherokee Nation, Oklahoma
Wilson, Mackenzie Paulette, University of Arizona College of Pharmacy, Navajo Tribe of AZ, NM, & UT
Wood, Chad Nathaniel, University of Utah College of Medicine, Cherokee Nation, Oklahoma
Woodin, Angeline Elizabeth, Grand Valley State Univ., Little Traverse Bay Bands of Odawa Indians of Michigan
Woodruff, Patience M., University of North Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Work, Hugh Edward, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Wright, Christy Marie, Arizona State University, Nenana Native Association
Yandell, Seth David, University of Texas Medical Branch-Galveston, Choctaw Nation of Oklahoma
Yazzie, Abiegail B., New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Yazzie, Charisse Lindsey, Arizona State University, Navajo Tribe of AZ, NM, & UT
Yazzie, Irene, Weber State University, Navajo Tribe of AZ, NM, & UT
Yazzie, Kelly Colleen Gateway Community College, Navajo Tribe of AZ, NM, & UT

Yazzie, Maria, University of New Mexico-Albuquerque, Navajo Tribe of AZ, NM, & UT
Yazzie, Nazhone Paul, University of Arizona College of Medicine, Navajo Tribe of AZ, NM, & UT
Yazzie, Sharon, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Yazzie, Timothy, Midwestern University, Navajo Tribe of AZ, NM, & UT
Yazzie-Francisco, Myra Lynn, Phoenix College, Navajo Tribe of AZ, NM, & UT
Yoe, Carolyn Mae, Weber State University, Navajo Tribe of AZ, NM, & UT
Young, Sawar Chalutch, University of Washington, Yurok Tribe of the Yurok Reservation, California
Zahne, Janis Ivy, Arizona State University, Navajo Tribe of AZ, NM, & UT
Zwaryck, Shelby Leona, University of Montana School of Pharmacy, Chippewa-Creek Indians of the Rocky Boy's Reservation, MT

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300, Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Dated: April 16, 2002.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 02–9867 Filed 4–22–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Targeted Capacity Expansion: Meeting the Mental Health Services Needs of Older Adults,* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. no. of awards	Project period
Targeted Capacity Expansion: Meeting the Mental Health Service Needs of Older Adults.	May 31, 2002	$5,000,000	10	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. 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.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (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: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015. 800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration's (SAMHSA's), Center for Mental Health Services (CMHS), announces the availability of Fiscal Year 2002 funds for increasing service capacity for older persons with priority mental health needs. Grants or cooperative agreements are made as part of SAMSHSA/CMHS'' ''Targeted Capacity Expansion'' (TCE) Program. The program title is Mental Health Services for Older Adults.

The purpose of this initiative is to increase the capacity of cities, counties, and tribal governments and not-for-profit direct service providers to provide intervention, early intervention, and treatment services to meet emerging and urgent mental health needs of older persons. In tandem with the direct provision of services the program provides resources for communities to build and/or expand the local and regional service system infrastructure that will help support prevention, early intervention, and treatment services having a strong evidence base.

Group I Awards

Targeted Capacity Expansion Awards for Meeting the Mental Health Service Needs of Older Adults. Up to nine awards are anticipated for Targeted Capacity Expansion grants to help communities provide direct services and to build the necessary infrastructure to support this expanded service provision for serving the diverse mental health needs of older persons.

Group II Award

Targeted Capacity Expansion Award for National Technical Assistance Center for the Mental Health Needs of Older Adults. One award is anticipated for a National Technical Assistance Center focused on the growing diverse mental health needs of older adults. This national resource center will engage in activities to synthesize and disseminate the knowledge base for mental health outreach, prevention, early intervention, assessment and treatment services for older persons.

Eligibility

Eligibility to apply for Group I Awards will be limited to cities,

counties, and tribal governments and their agencies, and to not-for-profit direct service providers. Eligibility to apply for Group II Award includes all entities eligible for Group I Awards with the addition of private or public universities. Interested parties who do not meet these criteria, including faith-based organizations, are encouraged to partner with an agency or organization that is eligible to apply as the lead agency.

Availability of Funds

It is estimated that a total of $5 million will be available to support the program under this GFA in FY 2002. Actual funding levels will depend on the availability of funds. $3.6 million will be dedicated for Group I Awards. No more than $400,000 in total costs (direct and indirect) will be awarded per grant per year. $1.4 million will be dedicated for the Group II category. Annual awards will be made subject to the continued availability of funds and progress achieved by awardees.

Period of Support

Support may be requested for a period of up to three years for Group I and Group II awards (in three budget periods of one year each).

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award 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. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact

For questions concerning program issues, contact: Betsy McDonel Herr, Ph.D., Social Science Analyst, Center for Mental Health Services, SAMHSA, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857. (301) 594–2197. (301) 443–0541 (Fax). E-mail: *bmcdonel@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Officer, Division of Grants Management, Substance Abuse and Mental Health Services Administration, Rockwall II, Room 630, 5515 Security Lane, Rockville, MD 20852. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

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.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

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, 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. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2002 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: Division 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: April 18, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–9951 Filed 4–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of Indian Education Programs; Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Indian Education Programs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Bureau of Indian Affairs received an emergency clearance from the Office of Management and Budget for enrollment applications for two Bureau-operated post secondary schools: Haskell Indian Nations University and Southwestern Indian Polytechnic Institute. We are now preparing a regular clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before June 24, 2002.

ADDRESSES: You may hand deliver or send your written comments to Kenneth Whitehorn, Department of the Interior, Office of Indian Education Programs, Branch of Planning, MS Room 3512 MIB, 1849 C Street, NW, Washington, DC 20240. You may fax your written comments to (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Kenneth Whitehorn, (202) 208–4976.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

I. Abstract

The Bureau of Indian Affairs (BIA) is providing the admission forms for Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute for 60-day review and comment period. These admission forms are useful in determining program eligibility of American Indian and Alaska Native students for educational services. The form has been changed to include a Paperwork Reduction Act and Public Burden statements, a Privacy Act statement, and an Effects of NonDisclosure statement.

These forms are utilized pursuant to Blood Quantum Act, Public Law 99–228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

All written comments will be available for public inspection in Room 3512 of the Main Interior Building, 1849 C Street, NW, Washington, DC, from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, excluding legal holidays.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: Applications for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB approval number: 1076–0114.

Type of Review: Renewal.

Description: These eligibility application forms are mandatory in determining a student's eligibility for educational services. This collection is at no cost to the public.

Total Number of Respondents: 2,281.

Total Number of Annual responses: 3,943.

Total Annual Burden hours: 2,214 hours.

Dated: April 12, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–9906 Filed 4–22–02; 8:45 am]

BILLING CODE 4310–TS–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has sent the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. The public may obtain copies of the specific information collection requirements, related guidelines and explanatory material by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: We will consider all comments received on or before June 24, 2002. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

ADDRESSES: Send your comments and suggestions on the requirement to Rebecca A. Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov.*

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We are seeking a renewal of clearance from the OMB to collect information in conjunction with the Evaluation Grants Program to be conducted under the North American Wetlands Conservation Act (NAWCA) (Public Law 101–233, as amended; December 13, 1989). The Act, Section 19 (Assessment of Progress in Wetlands Conservation), requires the Secretary of the Interior, in cooperation with the

North American Wetlands Conservation Council, to: ''* * * 1) develop and implement a strategy to assist in the implementation of this Act in conserving the full complement of North American wetlands systems and species dependent on those systems, that incorporates information existing on the date of the issuance of the strategy in final form on types of wetlands habitats and species dependent on the habitats; and 2) develop and implement procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act.'' To meet this requirement, we are continuing the Evaluation Grants Program initiative that requires selected prospective grantees to submit pre-proposals and proposals that are geared specifically to project approaches that will readily provide data for monitoring and evaluation purposes. Current NAWCA projects do not, and cannot, provide the data and information necessary to meet the monitoring and evaluation requirements of Section 19. We have updated supporting evaluation grants guidelines, or instructions, that will provide the basis for information collection and this request. We also have available for review and comment the original ''Strategy For Implementing and Evaluating the Effectiveness of Wetland Conservation Projects Completed Under the NAWCA'' (Sect. 19, part 1) and the ''NAWCA Evaluation Grant Proposal Development and Review'' outline (Sect. 19, part 2). Both of these documents are approved by the NAWCA Council and have been used to develop the guidelines. The Service is requesting a 3-year term of renewed approval for this information collection activity. 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.

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0104. OMB approval was granted September 30, 1999.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to partially fill that funding need. The purpose of NAWCA is to use partnerships to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body, the North American Wetlands Conservation Council, is exempt from the Federal Advisory Committee Act. The purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding, which it does three times annually.

Subsection (c) of Section 5 (Council Procedures) provides that the ''* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *,'' which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (Division of Bird Habitat Conservation) within the Service.

Applications from partnerships competing for regular grant program funds must describe in substantial detail project locations and other characteristics that will meet standards established by the Council and requirements of NAWCA. The Evaluation Grants Program will differ in that it will be a two-stage process wherein successful applicants will have submitted both a pre-proposal and a proposal. Pre-proposals are intended to allow screening such that only the projects that have the greatest potential for contributing to the evaluation program will be continued into the proposal stage. The Council Coordinator's office currently publishes and distributes Standard and Small Grants instructional booklets that assist applicants in formulating project proposals for Council consideration. The guidelines for the grants evaluation program, to be contained in the request for proposal, is an additional information collection instrument. The guidelines and instructions and other instruments, *e.g.,* **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc. In the case of the additional Evaluation Grants Program guidelines, the request responds also to the statutory requirements of the Act.

In summary, information collection under this program is required to obtain a benefit, *i.e.,* a cash reimbursable grant that will be given competitively to selected applicants based on eligibility and the relative value of their projects to contribute to meaningful technical evaluation of the success of the grants programs. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. We intend the Evaluation Grant Program to have one project proposal submissions window per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: We estimate the reporting burden, or time involved in writing project submissions, to be 8 hours for a pre-proposal and 40 hours for a proposal.

Number of Respondents: We estimate that 30 pre-proposals and 10 proposals will be submitted each year for the grants evaluation program.

Dated: April 3, 2002.

Rebecca Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–9907 Filed 4–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day notice of information collection under review; ABC change of address form and special filing instructions for ABC class members; forms I–855 and M–426.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collections:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ABC Change of Address Form and Special Filing Instructions for ABC Class Members.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–855 and M–426. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is mandated by the American Baptist Churches v. Thornbough, 760 F. Supp. 796 (N.D. Cal. 1991) and will be used by class members to inform the INS of address changes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 16, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9826 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day notice of information collection under review; alien address report card; form I–104.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Alien Address Report Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–104. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information on this form provides the Service with an

acceptable manner acquiring information concerning the current addresses and other information from certain classes or groups of aliens who are within the United States.

(5) *An esimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* I annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 16, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9821 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60–day notice of information collection under review; guarantee of payment; form I–510

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and afected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–510. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. Form I–510 is executed upon each arrival of an alien crewman within the purview of Section 253 of the immigration and Nationality Act.

(5) *An estimate of the total number or respondents and amount of time estimated for an average respondent to respond*: 100 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 8 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 16, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9822 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; petition by entrepreneur to remove conditions; form I–829.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–829. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 65 minutes (1.08) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 216 annual burden hours.

If you have additional comments, suggestions, or need a cop of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: April 16, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9823 Filed 4–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day notice of information collection under review; change of address card; form I–697.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Papwerwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimated of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–697. adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Service uses the information to update an applicant's address in the Legalization Automated Database. The country, date of birth, and registration number are elements needed to identify specific applicants who have similar names and/or don't provide a A-number, registration number, or provide a wrong A-number.

(5) *an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 16, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9824 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; notice of naturalization oath ceremony; form N–445.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the

public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 24, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–445. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or require to respond, as well as a brief abstract:* Primary: Individuals or households. The information furnished on this form refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 53,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291. Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 16, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–9825 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 4:30 p.m. on Monday, June 3, 2002 & 8:30 a.m. to 12 noon on Tuesday, June 4, 2002.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Status: Open.

Matters to be Considered: Division reports: NIC Information Center presentation on state corrections agency budget cuts in Fiscal Year 2002; discussion on Board members' travel; Quarterly Report by Office of Justice Programs; and update on Interstate Compact activities.

FOR MORE INFORMATION CONTACT: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 02–9908 Filed 4–22–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Reinstatement of Associated Grocers, Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Reinstatement, Associated Grocers, Inc.

SUMMARY: This notice advises that Associated Grocers, Inc., has been reinstated as an eligible bidder on Federal contracts and subcontracts. For further information, contact Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210 (202–693–0101).

SUPPLEMENTARY INFORMATION: Associated Grocers, Inc., Seattle, Washington, is as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed: April 16, 2002, Washington, DC.

Charles E. James, Sr.,

Deputy Assistant Secretary.

[FR Doc. 02–9919 Filed 4–22–02; 8:45 am]

BILLING CODE 4510–CM–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0196(2002)]

Longshoring and Marine Terminal Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

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

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to increase the existing burden-hour estimates for, and to extend OMB approval of, the information-collection requirements of the Standard on Longshoring (29 CFR part 1918) and Marine Terminal Operations (29 CFR part 1917).[1] The Standard contains requirements related

[1] Based on its assessment of the paperwork requirements contained in these Standards, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

to the testing, certification and marking of specific types of cargo lifting appliances and associated cargo handling gear and other cargo handling equipment such as conveyors and industrial trucks.

DATES: Submit written comments on or before June 24, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0196(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Standard on Longshoring and Marine Terminals is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov*, and select ''*Information Collection Requests*.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and containing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Standard contains a number of collections of information which are used by employers to ensure that employees are informed properly about the safety and health hazards associated with marine terminal and longshoring operations. OSHA uses the records developed in response to the collection of information requirements to find out if the employer is complying adequately with the provisions of the standards.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden-hour estimate, and to extend OMB approval of, the collection-of-information requirements specified by the Standard on Longshoring and Marine Terminals. The Agency is proposing to increase the current burden-hour estimate from 23,161 hours to 36,100 hours, a total increase of 12,999 hours. This increase was a result of identifying several miscalculations in the previous ICR.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Longshoring (29 CFR part 1918) and Marine Terminal Operations (29 CFR part 1917).

OMB Number: 1218–0196.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 748.

Frequency of Recordkeeping: Varies (Initially; Annually; On occasion; Monthly; Weekly).

Average Time per Response: Varies from two minutes (.03 hour) to 8 hours.

Total Annual Hours Requested: 36,160.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on April 18, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–9922 Filed 4–22–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

117th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 117th open meeting of the full Advisory Council on Employee and Pension Benefit Plans will be held Thursday, May 9, 2002, in Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 2:00 p.m. and end at approximately 3:30 p.m., is to consider the items listed below:

I. Welcome and Introduction and Swearing In of New Council Members
II. Report from the Assistant Secretary of Labor for the Pension and Welfare Benefits Administration (PWBA)
  A. PWBA Priorities for 2002
  B. Announcement of Council Chair and Vice Chair
III. Introduction of PWBA Senior Staff
IV. Summary of the 2001 Final Reports Made by Council Working Groups
V. Determination of Topics to Be Addressed by Council Working Groups for 2002

Members of the public are encouraged to file a written statement pertaining to any topics the Council may wish to study for the year concerning ERISA by submitting 20 copies on or before April 28, 2002 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accomodations, should contact Sharon Morrissey by April 28 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying Twenty (20) copies of such statements should be sent to the

Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 28, 2002.

Signed at Washington, DC, this 18th day of April, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–9920 Filed 4–22–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–052)]

NASA Advisory Council, Space Flight Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Flight Advisory Committee (SFAC).

DATES: Friday, May 3, 2002 from 1:30 p.m. until 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room MIC 7, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Y. Edgington (Stacey), Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room. The agenda for the meeting is as follows:

—*Overview, status of the Office of Space Flight programs.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 17, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–9838 Filed 4–22–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 02–1, ''Supervisory Review Committee'' (IRPS 02–1).

SUMMARY: This policy statement amends Interpretive Ruling and Policy Statement (IRPS) 95–1 to add Regulatory Flexibility Program issues to the list of material supervisory determinations that credit unions may appeal to NCUA's Supervisory Review Committee.

DATES: The IRPS is effective April 23, 2002.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board (Board) adopted guidelines that, established an independent appellate process to review material supervisory determinations, entitled ''Supervisory Review Committee'' (IRPS 95–1). 60 FR 14795 (March 20, 1995). IRPS 95–1 created a Supervisory Review Committee (Committee) consisting of three senior staff members to hear appeals of material supervisory determinations. IRPS 95–1 defined material supervisory determinations to include determinations on composite CAMEL ratings of 3, 4 and 5, all component ratings of those composite ratings, significant loan classifications and adequacy of loan loss reserves. The Board noted in the preamble to IRPS 95–1, however, that it would consider expanding the disputes covered by the Committee's review process at a later date. 60 FR 14795, 14796 (March 20, 1995).

B. Regulatory Flexibility Program Amendment

On November 15, 2001, the Board adopted a final rule that established the Regulatory Flexibility Program (RegFlex). 66 FR 58656 (November 23, 2001). Under RegFlex, credit unions with advanced levels of net worth and consistently strong supervisory examination ratings are exempt from certain NCUA regulations, in whole or in part. A Regional Director may revoke a credit union's RegFlex authority, in whole or in part, by giving the credit union written notice of the Region's substantive and documented safety and soundness reasons. 12 CFR 742.6. The RegFlex final rule provides that a credit union may appeal the Regional Director's determination to the Committee. 12 CFR 742.7. This IRPS amends IRPS 95–1 by including RegFlex determinations in the list of material supervisory determinations within the Committee's purview and the special filing time frames adopted by the Board for RegFlex revocation appeals.

In the RegFlex rule, the Board adopted slightly different filing time frames for RegFlex revocation appeals than those currently in IRPS 95–1. Unlike the Regional Director's decision to revoke RegFlex authority, the other material supervisory determinations involve an intermediate review by the Region of a field examiner's determination before appealing to the Committee. A credit union may appeal the Regional Director's decision to revoke RegFlex authority to the Committee within 60 days from the date of the determination. 12 CFR 742.7.

Under the RegFlex rule, the credit union may appeal the Committee's decision to the Board within 60 days from the date the Committee issued the decision. 12 CFR 742.7. This differs from appeals of other material supervisory determinations because either the credit union or the Region may appeal to the Board within 30 days of receipt of the decision by the parties.

Regulatory Procedures

Regulatory Flexibility Act

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

This final IRPS expands the types of material supervisory determinations that credit unions may appeal to the NCUA's Supervisory Review Committee. This final IRPS imposes no additional financial, regulatory or other burden on credit unions. NCUA has determined and certifies that this final IRPS will not have a significant impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

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

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

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

By the National Credit Union Administration Board on March 5, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 02–1 amends IRPS 95–1 as follows:

Note: The following ruling will not appear in the Code of Federal Regulations.

1. Authority: Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325.

2. Amend the third paragraph in subpart A to read as follows:

Material supervisory determinations are limited to: (1) Composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; (3) loan classifications on loans that are significant as determined by the appealing credit union; and (4) revocations of Regulatory Flexibility Program (RegFlex) authority.

3. Add a new paragraph in subpart A, after the sixth paragraph to read as follows:

If a Regional Director revokes a credit union's RegFlex authority, in whole or in part, upon written notice to the credit union, the credit union may appeal the revocation to the Committee within 60 days from the date of the Region's determination. The RegFlex revocation is effective as soon as the credit union receives the notice and it remains in effect pending a decision from the Committee.

4. Add the following sentence to the last paragraph in subpart A:

If a RegFlex revocation is the basis of the appeal, the credit union may appeal the Committee's decision to the NCUA Board within 60 days from the date the Committee issued its decision.

[FR Doc. 02–9891 Filed 4–22–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 536, ''Operator Licensing Examination Data''.

3. *The form number if applicable:* NRC Form 536.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* All holders of operating licenses or construction permits for nuclear power reactors.

6. *An estimate of the number of responses:* 80.

7. *The estimated number of annual respondents:* 80.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 80.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) information on whether the examination will be facility developed or NRC developed; and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of April 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–9886 Filed 4–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension*: Revision.

2. *The title of the information collection*: 10 CFR part 100, ''Appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants''.

3. *The form number if applicable*: N/A.

4. *How often the collection is required*: As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power and test reactors constructed and licensed in accordance with 10 CFR parts 50 and 52 and the Atomic Energy Act of 1954, as amended.

5. *Who will be required or asked to report*: Applicants and licensees for nuclear power and test reactors.

6. *An estimate of the number of responses*: 3 (2 responses + 1 recordkeeper).

7. *The estimated number of annual respondents*: 1.

8. *An estimate of the total number of hours needed annually to complete the requirement or request*: 9,000.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies*: N/A.

10. *Abstract*: 10 CFR part 100, ''Reactor Site Criteria,'' establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR parts 50 or 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. Non-seismic siting criteria must also be evaluated. Non-seismic siting criteria include such factors as population density, the proximity of man-related hazards, and site atmospheric dispersion characteristics. NRC uses the information required by 10 CFR part 100 to evaluate whether natural phenomena and potential man-made hazards will be appropriately accounted for in the design of nuclear power and test reactors.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0093), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of April 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–9887 Filed 4–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29654, License No. 49–26861–01, EA–01–219]

In the Matter of Centennial Engineering & Research, Inc., Sheridan, WY; Order Imposing Civil Monetary Penalty

I

Centennial Engineering & Research, Inc. (Licensee) is the holder of Materials License No. 49–26861–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 22, 1987. The last amendment, Amendment No. 3, was issued June 8, 2001. The license authorizes the Licensee to possess and use portable moisture/density gauges containing byproduct material in accordance with the conditions specified therein.

II

An inspection and investigation of the Licensee's activities were completed in September 2001. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 3, 2001. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters dated December 26, 2001. In its responses, the Licensee admitted the violations that were the basis for the civil penalty, but disagreed that there was any willfulness associated with the violations and requested mitigation of the civil penalty.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that violations cited in the Notice were willful, and that the civil penalty proposed for the violations should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a

statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated this 9th day of April, 2002.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

Appendix to Order Imposing Civil Penalty

NRC Evaluation and Conclusion of Licensee's Request for Mitigation of Civil Penalty

On December 3, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection and investigation. Centennial Engineering & Research, Inc., (CER or Licensee) responded to the Notice on December 26, 2001. The Licensee admitted Violations A and B, but denied that there was any willfulness associated with the violations and requested mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

Summary of Licensee's Request for Mitigation

The Licensee provided three bases for mitigating the civil penalty in its December 26, 2001 Answer to a Notice of Violation:

(1) The violations created no actual or potential safety consequences. The Licensee stated that the portable gauges were cared for properly at all times, and that complying with NRC regulations regarding the care of byproduct material and fully protecting the public interest is an extenuating circumstance.

(2) The Licensee now believes that willfulness did not occur. The Licensee's radiation safety officer intended to submit the license amendments in a timely manner, but was distracted by what he considered more pressing deadlines associated with his other responsibilities. The Licensee's radiation safety officer admitted to willfulness under ''pointed questioning'' by NRC investigators, and then that information was used against CER.

(3) The civil penalty was not applied consistently in that Roetech, LLC, also should be fined based on an equal level of knowledge regarding amendment submittal requirements that did not occur on a timely basis. The Roetech Radiation Safety Officer (RSO) had primary responsibility to submit the amendment transferring the location of the gauges and authorizing him to receive byproduct material.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's evaluation of the Licensee's three arguments follows:

(1) The NRC acknowledged in its December 3, 2001 letter and Notice that the violations created no actual or potential safety consequences. This factor was taken into account in determining the severity level of the violations. Absent willfulness, the violations would have been classified at Severity Level IV, and no civil penalty would have been considered. As our letter stated, willfulness resulted in these violations being classified as a Severity Level III problem.

(2) The NRC maintains its position that there was willfulness associated with the violations. We maintain our position because the radiation safety officer acknowledged that he knew what was required, because he took no action to comply until the NRC became involved, because he stated during his initial interviews and at the predecisional enforcement conference that cost was a factor in his procrastination (implying a conscious decision to delay action), because his failure to take action to comply continued for several months, and because he was reminded during this period that he was expected to take action to comply.

(3) The NRC took enforcement action against Roetech, LLC, based on its failure to obtain an NRC license before taking possession of portable gauges containing byproduct material. However, we concluded that the Roetech RSO's failure to submit the amendment transferring the location of the gauging device and authorizing himself to receive byproduct material was not willful because the radiation safety officer for the company believed he could use the gauges under CER's license as long as he was completing jobs covered by a contractual arrangement with CER. Following NRC's enforcement process, Roetech was issued a Severity Level IV NOV for possession of radioactive material without a license. NRC's policy is to not assess a Civil Penalty for violations cited a Severity Level IV.

NRC Conclusion

The NRC concludes that CER has not provided a sufficient basis for mitigation of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of $3,000 should be imposed by Order.

[FR Doc. 02–9889 Filed 4–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 1, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 1, 2002—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its

consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: April 16, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–9890 Filed 4–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of April 22, 29, May 6, 13, 20, 27, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters To Be Considered

Week of April 22, 2002

There are no meetings scheduled for the Week of April 22, 2002.

Week of April 29, 2002—Tentative

Tuesday, April 30, 2002

9:30 a.m. Discussion of Intergovernmental Issues (Closed—Ex. 1)

Wednesday, May 1, 2002

8:55 a.m. Affirmation Session (Public Meeting) (If needed)

9 a.m. Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of May 6, 2002—Tentative

There are no meetings scheduled for the Week of May 6, 2002.

Week of May 13, 2002—Tentative

Thursday, May 16, 2002

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Meeting with World Association of Nuclear Operators (WANO) (Public Meeting)

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of May 20, 2002—Tentative

There are no meetings scheduled for the Week of May 20, 2002.

Week of May 27, 2002—Tentative

Tuesday, May 28, 2002

9:30 a.m. Briefing on Nuclear Material Licensee Decommissioning and Bankruptcy Issues (Public Meeting) (Contact: Larry Camper, 301–415–7234)

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Wednesday, May 29, 2002

9:25 a.m. Affirmation Session (Public Meeting) (If needed) Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301–415–1470)

9:30 a.m.

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on April 11 and 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2), Docket Nos. 50–275–LT, 50–323–LT, (b) International Uranium (USA) Corporation (White Mesa Uranium Mill) Appeal of LBP–02–03 (MLA–10), (c) Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawaba Nuclear Station, Units 1 & 2), (d) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Protective Order for Documents Submitted with Skull Valley Band's Brief in Response to CLI–02–08 (Granting Review of Environmental Justice Ruling, LBP–02–08), and (e) Re-Affirmation of the Final Rule on Part 35—Medical Use of Byproduct Material'' be held on April 12, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electric message to *dkw@nrc.gov.*

Dated: April 18, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–9983 Filed 4–19–02; 10:35 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission For OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension Rule 17a–13; SEC File No. 270–27; OMB Control No. 3235–0035

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for the extension of the previously approved collection of information on the following rule: 17 CFR 240.17a–13 Quarterly Security Counts to be Made by Certain Exchange Members, Brokers, and Dealers.

Rule 17a–13(b) generally requires that at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) provides that under specified conditions, the securities counts, examination and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not

require filing a report with the Commission, the discrepancies must be reported on Form X–17a–5 as required by Rule 17a–5. Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self-Regulatory Organizations (''SROs'') to those firms having problems in their back offices.

Because of the many variations in the amount of securities that broker-dealers are accountable for, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–13. Approximately 91% of all registered broker-dealers are subject to Rule 17a–13. Accordingly, approximately 6,579 broker-dealers have obligations under the Rule, and the average time it would take each broker-dealer to comply with the Rule is 100 hours per year, for a total estimated annualized burden of 657,900 hours. It should be noted that a significant number of firms subject to Rule 17a–13 have minimal obligations under the Rule because they do not hold securities. It should further be noted that most broker-dealers would engage in the activities required by Rule 17a–13 even if they were not required to do so.

Security counts under Rule 17a–13 are mandatory for broker-dealers. If a broker-dealer has security discrepancies that must be recorded in its records, such records must be preserved for a period of no less than three years pursuant to Rule 17a–4(b)(1). Rule 17a–13 does not assure confidentiality for security discrepancy records and reports on Form X–17a–5.[1] Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written Comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9881 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The records required by Rule 17a–13 are available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45764; File No. SR–Amex–2002–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC to Establish Examination Fees on Member Firms for Which the Amex Is the Designated Examining Authority

April 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 27, 2002, the Amex amended the proposal.[3] The Amex again amended the proposal on April 4, 2002.[4] The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 26, 2002 letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposal.

[4] *See* April 3, 2002 letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, SEC and attachments (''Amendment No. 2''). In Amendment No. 2, the Amex provided additional language describing the purpose of the proposed rule change, and provided a new Exhibit A that completely replaces and supersedes the previous Exhibits A filed with the Commission. For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have commenced on April 4, 2002.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.17d–1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Member Fees Schedule to impose quarterly Examination Fees on member firms for which the Amex is the Designated Examining Authority (''DEA''). The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

For each member firm for which the Amex serves as the DEA pursuant to Rule 17d–1 under the Act,[6] the Amex proposes to charge an Examination Fee of $.00040 per dollar of gross revenue, as reported in the firm's FOCUS Report (Form X–17A–5 or replacement form). FOCUS Reports are filed either quarterly or annually. This fee is subject to a quarterly minimum fee of $750 for firms that engage in public business and $250

for firms that do not engage in public business. In order to reduce the potential impact on member firms that operate or are otherwise affiliated with other entities subject to the fee, the Exchange will impose on member firms operating additional entities (*e.g.*, affiliated broker-dealers) 50% of the minimum fees for each additional entity.

The proposed fee is intended to permit the Exchange to recover a portion of the regulatory expenses incurred by the Exchange in its performance of its DEA responsibilities.[7] The Amex notes that the proposed fee is comparable to member fees imposed by the Chicago Board Options Exchange and New York Stock Exchange in connection with the DEA function of those exchanges.[8]

The proposed fees will be designated ''Examination Fees'' under the Exchange's Member Fees Schedule, attached as Exhibit A. In addition to adding the Examination Fees, the Member Fees Schedule has been revised to include member fees previously filed with the Commission, including: (1) under revised Section II (Initiation Fees), the Qualifying Membership Retesting Fee,[9] the Regular and Options Principal Special Transfer (Lease) fee under Article VII, Section 1(c) of the Exchange Constitution; [10] and (2) all fees under revised Section III (Membership Fees), including interim member fees,[11] fees for Associate Members and Off-Floor traders,[12] and Specialist Fees.[13] Former Section III (Permits), which, with the exception of Limited Trading Permit fees, included fees that are no longer applicable and have been deleted, and former Section IV (Access Fees), which previously included only the electronic access fee, have been consolidated into revised Section III (Membership Fees).

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [14] in general and furthers the objectives of section 6(b)(4) of the Act [15] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [16] and subparagraph (f)(2) of Rule 19b–4 thereunder,[17] because it establishes or changes a due, fee, or other charge imposed by the Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–10 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9883 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

[7] The fee is not designed to generate revenue. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Joseph Morra, Special Counsel, Division, SEC, April 15, 2002. The Commission expects that the Amex will monitor the fee carefully, and should the Amex collect more than is necessary to offset costs incurred in the performance of its DEA responsibilities, the Commission expects the Amex to adjust the fee.

[8] *See* Securities Exchange Act Release Nos. 43144 (August 10, 2000), 65 FR 50258 (August 17, 2000) (SR–CBOE–2000–24) and 20843 (April 9, 1984), 49 FR 15042 (April 16, 1984) (SR–NYSE–84–7).

[9] Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR–Amex–2001–22).

[10] Securities Exchange Act Release Nos. 23823 (November 18, 1986), 51 FR 42955 (November 26, 1986) (SR–Amex–86–28) and 40426 (September 10, 1998), 63 FR 49766 (September 17, 1988) (SR–Amex–98–32).

[11] Securities Exchange Act Release No. 43016 (July 7, 2000), 65 FR 44552 (July 18, 2000) (SR–Amex–2000–19).

[12] Securities Exchange Act Release No. 43279 (September 11, 2000), 65 FR 56606 (September 19, 2000) (SR–Amex–2000–44).

[13] Securities Exchange Act Release No. 45725 (April 10, 2002) (SR–Amex–2002–8).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] *See* note 4 *supra.*

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45770; File No. SR–CHX–2001–26]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic and Manual Execution Procedures

April 17, 2002.

I. Introduction

On November 14, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder, [2] a proposed rule change to amend its rules to clarify a specialist's obligations relating to the automatic execution of orders and provide guidance regarding a specialist's ability to switch from automatic to manual execution mode. Notice of the proposed rule change was published for comment in the **Federal Register** on February 13, 2002. [3] The Commission received no comments with respect to the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4

[3] Securities Exchange Act Release No. 45410 (February 6, 2002), 67 FR 6774.

II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders. The proposed rule change is intended to clarify a specialist's obligations relating to the automatic execution of orders and to provide CHX specialists and floor officials with additional guidance regarding the ability of a CHX specialist to switch to manual execution mode. The two rule changes are summarized below.

a. Reduction of Minimum Auto Execution Threshold

The proposed change to Article XX, Rule 37(b), which governs automatic execution of eligible orders, would reduce the minimum auto execution threshold from 300 shares to 100 shares. This change is intended to reconcile a specialist's automatic execution obligation with the post-decimalization trading environment. The Exchange represents that, given the scattering of liquidity over multiple price points and resulting reduction in Best Bid or Offer (''BBO'') size, [4] many specialists desire to reduce their automatic execution exposure for certain issues to levels that are commensurate with reduced BBO size. In order to preserve consistency and avoid customer confusion, the proposed rule change would apply to both Dual Trading System and Nasdaq/NM issues. Specialists would remain free to increase their auto execution thresholds to larger sizes if they believe that business/marketing considerations so demand. The Exchange represents that, in fact, a number of CHX specialists have indicated that they would reduce their auto execution threshold to 100 shares only in very limited instances.

b. Procedures for Floor Official Approval of Manual Execution Mode

The Exchange also proposes to amend Article XX, Rule 37, Interpretation and Policy .04, which governs the procedures by which specialists are to obtain permission to switch from automatic execution mode to manual execution mode.

The proposed amendment to the Interpretation places greater responsibility on the specialist firm seeking to shift to manual execution mode. Under current Interpretation .04, a specialist firm seeking to switch from automatic execution mode to manual execution mode must seek the permission of two floor officials before switching to manual mode; once in manual mode, the specialist firm must return to automatic execution functionality when the conditions that caused the switch to manual mode are no longer present. Specialists also must immediately reinstate the automatic execution functionality when the primary market quotes accurately reflect market conditions.

By contrast, under the proposed amendment to Interpretation .04, the specialist firm is required to secure the permission of its floor supervisor to switch to manual mode. To permit the specialist to remain in manual execution mode, the floor supervisor must immediately notify and secure the approval of one floor official. The permission granted by the floor official to operate in manual execution mode shall be in effect for a period of five minutes only. After that five minute period, the specialist firm's floor supervisor must again secure the permission of the floor official who granted the initial permission (and if such floor official is not available, then from another floor official) to allow the specialist firm to remain in manual execution mode. Documentation regarding the switch to manual mode must be filed with the CHX Market Regulation Department before the next business day's opening.

Finally, the proposed rule change reduces the time period in which a specialist firm may remain in manual execution mode when a certain analyst/reporter's report is broadcast on cable television, pursuant to the terms and conditions of Interpretation .04. Under current Interpretation .04, in the case of such a cable television broadcast, a specialist may switch from automatic to manual mode without floor official approval, and may remain in manual mode for no more than ten minutes. The proposed rule change reduces outside limit from ten to five minutes.

The Exchange represents that it anticipates that the proposed rule change will promote greater accountability and preclude reliance on manual execution mode in a manner that is potentially violative of CHX rules. Specifically, the Exchange believes that reducing the automatic execution threshold from 300 to 100 shares will reduce the likelihood of a specialist firm switching from automatic to manual mode without satisfying the criteria in Interpretation .04. [5] The Exchange also believes that the proposed rule change will assist the Market Regulation Department in determining whether violations of the Exchange's rules regarding manual execution mode have occurred.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b). [6] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that reducing the size threshold for automatic execution from 300 to 100 shares will likely encourage CHX specialists to remain in the automatic execution mode for longer periods of time by decreasing their risk of exposure to larger sized orders. This in turn should enable investors to take greater advantage of the benefits of automatic execution with respect to speed and price of execution. [8] The Commission notes that, under the proposed rule change, specialists retain the ability to increase their automatic execution thresholds to a larger size if they choose to do so.

In addition, the Commission finds that new Interpretation .04 promotes investor protection and the public interest by imposing new requirements on specialists seeking to switch from

[4] The Exchange represents that average size at BBO price points has declined significantly following the transition to decimal pricing, with approximate size reductions of 67% in the case of Tape A issues (securities listed on the NYSE), 37% for Tape B issues (securities listed on the Amex) abd 44% for Tape O issues (securities listed on Nasdaq)

[5] Telephone conversation between Kathleen M. Boege, Associate General Counsel, CHX and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation (''Division''), Commission (March 22, 2002).

[6] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] In the MAX System, the largest universe of orders that are eligible for price improvement are orders subject to automatic execution. For example, CHX Rule 37(h) sets forth price guarantees applicable to CHX's SuperMax 2000 system, a voluntary automatic execution program within the MAX System. SuperMax 2000 must be enabled on an issue-by-issue basis by the specialist, and these price guarantees apply only when the specialist is in automatic execution mode. Telephone conversation between Kathleen M. Boege, Associate General Counsel, CHX and Gordon Fuller, Counsel to the Assistant Director, Division, Commission (March 22, 2002).

automatic execution to manual mode. The Commission notes that, in cases of breaking news stories broadcast on cable television, the specialist may switch to manual mode without floor official approval as under the previous language of the Interpretation; however, the maximum period of time in which the specialist may remain in manual mode without floor official approval has been reduced from ten minutes to five minutes. The Commission also notes that, in instances other than a cable news broadcast, the specialist must secure the permission of its floor supervisor to switch to manual mode; the floor supervisor in turn must obtain approval from one floor official to permit the specialist to remain in manual mode. It is significant that the specialist may remain in manual mode for only five minutes without the floor supervisor renewing the approval of the same floor official (or obtaining approval of another floor official if the first official is not available). Finally, the Commission notes that new Interpretation .04 requires that documentation regarding the switch be filed with the Market Regulation Department before the next business day's opening. The Commission believes that these safeguards will provide greater accountability on the part of specialists when they switch from automatic execution mode to manual execution mode.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-CHX–2001–26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9882 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45765; File No. SR–ISE–2002–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC to Establish a $.10 Surcharge for Non-Customer Transactions in Options on Nasdaq Biotech Index® iShares

April 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4[2] thereunder, notice is hereby given that on April 15, 2002, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a $.10 surcharge for non-customer transactions in options on Nasdaq Biotech Index® iShares.

The text of the proposed rule change appears below. New text is in *italics*.

ISE Schedule of Fees

Electronic Market Place	Amount	Billable Unit	Frequency	Notes
* * *	*	*	*	*
Execution Fees.				
* * *	*	*	*	*
• Surcharge for Options on Nasdaq 100 Index Tracking Stock[sm] *and the Nasdaq Biotech Index® iShares*.	$0.10	contract/side	Transaction	Excludes customers
* * *	*	*	*	*

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 Exchange states that it has entered into a license agreement to use various trademarks regarding the Nasdaq Biotech Index® in connection with its trading of options on the Nasdaq-100 Index Tracking iShares®. The purpose of this proposed rule change is to adopt a fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade in options on this instrument is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customer

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

transactions, the Exchange does not propose to charge this additional fee with respect to customer transactions. The fee will be charged only with respect to non-customer transactions.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b-4(f)(2) thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–10 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9884 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[6] 17 CFR 240.19b-4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45762; File No. SR–NASD–2002–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

April 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through September 30, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on April 15, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through September 30, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] 17 CFR 240.19b-4(f)(6)(iii).

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on April 15, 2002. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until September 30, 2002. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[12] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through September 30, 2002, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimal environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–54 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9855 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45761; File No. SR–NASD–2002–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

April 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule

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[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2 '' Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10

[9] 15 U.S.C. 78o-3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f))6).

[12] *Id.*

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through September 30, 2002, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350''). Without such an extension this standard would terminate on April 15, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through September 30, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[6] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on April 14, 2002.[7] Nasdaq now proposes to extend, through September 30, 2002, that pilot program. Extension until September 30th, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[8] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[12] and has requested that the Commission accelerate the operative date. The Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements because the extension of the pilot is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through September 30, 2002, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[7] Securities Exchange Act Release No. 45504 (March 5, 2002), 67 FR 10948 (March 11, 2002).

[8] *See* SR–NASD 2002–09.

[9] 15 U.S.C. 78o–3(b))6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–53 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9856 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45760; File No. SR–NASD–00–82]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. Relating to the Assessment of Fees for Unit Investment Trusts Included in Nasdaq's Mutual Fund Quotation Service

April 16, 2002.

On December 26, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7090, ''Mutual Fund Quotation Service'' (''MFQS'') to assess fees for Unit Investment Trusts (''UITs'') included in Nasdaq's MFQS.

The proposed rule change was published for comment in the **Federal Register** on February 20, 2001.[3] The Commission received one comment letter regarding the proposed rule change.[4] Nasdaq filed Amendment Nos. 1, 2, 3, and 4 to the proposal on June 18, 2001,[5] June 26, 2001,[6] July 2, 2001,[7] and February 11, 2002,[8] respectively. Amendment Nos. 1, 2, 3, and 4 to the proposed rule change were published for comment in the **Federal Register** on March 11, 2002.[9] The Commission received no comments regarding the amended proposal. This order approves the proposed rule change, as amended.

I. Description of the Proposal

Nasdaq's MFQS collects and disseminates data pertaining to the value of open-end and closed-end mutual funds and UITs. Specifically, the MFQS permits funds included in the MFQS (or pricing agents designated by the funds) to transmit directly to Nasdaq pricing information, including information about a fund's net asset value, offer price, and closing market price. The MFQS currently disseminates valuation data for over 11,000 funds.

NASD Rule 7090 currently sets forth the fees assessed for the inclusion of mutual funds in the MFQS. Specifically, NASD Rule 7090(a) provides for the assessment of an annual fee of $400 per fund authorized for the News Media Lists, $275 per fund authorized for the Supplemental List, and a one-time application processing fee of $250 for each new fund authorized for either list.

Nasdaq proposes to amend NASD Rule 7090(a) to provide that UITs included in the MFQS will be assessed an annual fee of $400 per trust authorized for the News Media Lists, $275 per trust authorized for the Supplemental List, and a one-time application processing fee of $250 for each new trust authorized. In addition, new NASD Rule 7090(b) provides that if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of $150. NASD Rule 7090(b) also provides that the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.[10]

Nasdaq states that the application fee supports the Fund Operations personnel who are required to review, record, and enter each fund into the MFQS for subsequent dissemination to electronic or print subscribers. Nasdaq notes that the annual fee for the News Media Lists and the Supplemental List support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to requests of users and subscribers for service enhancements.[11] In addition, Nasdaq states that the NASD maintains a staff and dedicated technology to produce the service.[12]

II. Summary of Comments

The Commission received one comment letter regarding the proposal.[13] The commenter generally supported Nasdaq's proposal but recommended a technical change to the proposed rule to ensure that the fee assessment procedures for UITs operate correctly. Specifically, the commenter recommended that Nasdaq eliminate the requirement in proposed NASD Rule 7090(b) that the replacement UIT be similar in ''share class'' to the replacing UIT because UITs do not issue shares,

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43915 (February 1, 2001), 66 FR 10926.

[4] *See* letter from Barry E. Simmons, Associate Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2001 (''ICI Letter'').

[5] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 15, 2001 (''Amendment No. 1''). Amendment No. 1 revises the proposal to: (1) Establish a $150 fee for replacement Unit Investment Trusts (''UITs''); and (2) respond to the ICI's comments by adopting the ICI's suggested requirements for a replacement UIT.

[6] *See* letter from Edward S. Knight, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2001 (''Amendment No. 2''). Amendment No. 2 replaces the text of NASD Rule 7090 proposed in Amendment No. 1 with text designed to indicate the way that Amendment No. 1 revises Nasdaq's original proposal rather than the existing text of NASD Rule 7090.

[7] *See* letter from Mary M. Dunbar, Vice President, Office of the General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 29, 2001 (''Amendment No. 3''). Amendment No. 3 replaces the proposed rule text provided in Amendment No. 2 with rule text that is designed to indicate more clearly the way that Amendment No. 1 revises the text of NASD Rule 7090 as amended by the original proposal.

[8] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 11, 2002 (''Amendment No. 4''). Amendment No. 4 provides a more detailed explanation of the need for the proposed fees.

[9] *See* Securities Exchange Act Release No. 45500 (March 11, 2002), 67 FR 10946.

[10] As originally proposed, NASD Rule 7090(b) eliminated the one-time application fee for a replacing trust if a UIT expired during an annual billing period and was replaced within three months by a trust that was materially similar in share class and trust objective. As discussed more fully below, Nasdaq revised its definition of a replacing trust in response to comments from the ICI. *See* Amendment No. 1, *supra* note 5. In addition, Nasdaq concluded that it could not offer a full waiver of the $250 application processing fee for a replacing trust, as it had originally proposed, because the number of UITs that potentially would qualify for the application fee waiver was substantially greater than Nasdaq had first anticipated. Accordingly, Nasdaq revised its proposal to impose a $150 application processing fee for replacements trusts. The $150 fee is a partial waiver of the standard $250 application processing fee. *See* Amendment No. 1, *supra* note 5.

[11] *See* Amendment No. 4, *supra* note 8.

[12] *See* Amendment No. 4, *supra* note 8.

[13] *See* ICI Letter, *supra* note 4.

nor do they have different classes of shares. The commenter also recommended that Nasdaq revise proposed NASD Rule 7090(b) to state that ''[i]f a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that has a materially similar investment objective, the replacing trust shall not be charged a one-time application fee.''[14]

In response to the commenter's concerns, Nasdaq revised its proposal to adopt the commenter's suggested requirements for the definition of a ''materially similar'' replacement trust.[15]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(5)[17] of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission notes that the proposed annual fees for UITs, equal to $400 per trust authorized for the News Media Lists and $275 per trust authorized for the Supplemental List, are identical to the annual fees currently assessed for mutual funds included in the MFQS.[18] Nasdaq states that the annual fees support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to requests of users and subscribers for service enhancements.[19]

In addition, as described more fully above, if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust will be charged a one-time application fee of $150 rather than the standard $250 application processing fee.[20] Although Nasdaq had hoped to waive the application processing fee for replacement UITs, Nasdaq concluded that it could offer only a $100 fee waiver because a significant number of UITs will qualify as replacement UITs and because replacement UITs will require significant processing before entry in the MFQS.[21] Nasdaq notes that the application fee supports the Fund Operations personnel who are required to review, record, and enter each fund into the MFQS for subsequent dissemination to electronic or print subscribers.[22]

The Commission believes that the proposed fees will support the operations of the MFQS and the inclusion of UITs in the MFQS. In addition, the Commission believes that the proposed fees provide for the equitable allocation of fees among persons using the MFQS because the fees will be assessed to UITs in proportion to their usage of the MFQS. Accordingly, the Commission finds that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among persons using a system that the NASD operates and controls, consistent with Section 15A(b)(5).

Finally, as discussed more fully above, the Commission notes that Nasdaq revised its proposal to adopt the commenter's suggested requirements for the definition of a ''materially similar'' replacement trust.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR-NASD–00–82), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9857 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* ICI Letter, *supra* note 4.

[15] *See* Amendment No. 1, *supra* note 5.

[16] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] The Commission approved these annual fees for mutual funds included in the MFQS in 2000. *See* Securities Exchange Act Release No. 42537 (March 16, 2000), 65 FR 15678 (March 23, 2000) (order approving File No. SR-NASD–99–77).

[19] *See* Amendment No. 4, *supra* note 8.

[20] *See* Amendment No. 1, *supra* note 5.

[21] *See* Amendment No. 4, *supra* note 8.

[22] *See* Amendment No. 4, *supra* note 8.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office Foreign Missions, Diplomatic Motor Vehicles

[Public Notice 3995]

Notice of Information Collection Under Emergency Review: Department of State, Office of Foreign Missions, Diplomatic Motor Vehicle Office Applications for Registration (Mission Vehicle), Registration (Personal Vehicle), Title, and Replacement Plates; Forms DS–100, DS–101, DS–102 and DS–104; OMB Collection Number 1405–0072

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: DS/OFM/VTC/V.

Title of Information Collection:

Application for Registration (Mission Vehicle),

Application for Registration (Personal Vehicle),

Application for Title, and

Application for Replacement Plates.

Frequency: As often as is necessary to register vehicles, issue titles and issue license plates.

Form Numbers: DS–100, DS–101, DS–102 & DS–104.

Respondents: Foreign mission personnel assigned to the United States: diplomatic agents, consular officers, administrative and technical staff, specified official representatives of foreign governments to international organizations, and their dependents.

Estimated Number of Respondents: 18,488.

Average Hours Per Response: .5 hours (30 minutes).

Total Estimated Burden: 9,244.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being

undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Attn: Jacqueline D. Robinson, U.S. Department of State, Office of Foreign Missions, State Annex 33, Room 218, Washington, DC 20008, who may be reached on (202) 895–3500.

Dated: March 7, 2002.

Theodore Strickler,

Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, Department of State.

[FR Doc. 02–9928 Filed 4–22–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12032]

Guidelines for Assessing Merchant Mariners through Demonstrations of Proficiency in Medical First Aid

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency in Medical First Aid. These measures were developed from recommendations and input provided by the Merchant Marine Personnel Advisory Committee (MERPAC).

DATES: Comments and related material must reach the Docket Management Facility on or before June 24, 2002.

ADDRESSES: Please identify your comments and related material by the docket number of this notice [USCG 2002–12032]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

The measures proposed here are also available from Mr. Mark Gould, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G-MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229, or e-mail address *mgould@comdt.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, e-mail or call Mr. Gould where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

Section A-VI/4–1 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency in Medical First Aid. The Coast Guard tasked MERPAC with referring to the Section, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has reviewed the measures recommended by MERPAC and has developed a final set that we are proposing here for use as guidelines for assessing that proficiency.

The guidelines are set up as follows: First we set forth the Competency within the STCW a mariner must demonstrate to meet the STCW section. Next we give a series of examples of Performance Conditions, a set of Performance Behaviors for each Performance Condition, and a set of Performance Standards for each Performance Behavior.

For example, if the Competency to demonstrate is: ''Apply immediate first aid in the event of accident or illness on board,'' a Performance Condition for that Competency demonstrating knowledge, understanding, and proficiency is: In a graded practical exercise, given a simulated non-critical patient, * * *

A Performance Behavior for that Condition is: * * * the candidate will perform an initial assessment (primary survey).

A Performance Standard for that Behavior is: The candidate correctly assesses and treats, within 1 minute, life-threatening conditions, including: level of responsiveness; breathing; circulation; and severe bleeding.

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Standards, he or she fails it.

Why is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic regulations at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for

practical tests as part of their programs for training and assessing seafarers.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at the home page of MERPAC, *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm).* These measures are available on the Internet at http://dms.dot.gov, under this docket number [USCG 2002–12032]. They are also available from Mr. Gould where indicated under **ADDRESSES.** If you submit written comments please include—

- Your name and address;
- The docket number for this Notice [USCG 2002–12032];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: April 2, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–9833 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–8994]

Proposed Advisory Circular (AC) No. 21.101–1 Change 1, Advisory Material for the Establishment of the Certification Basis of Changed Aeronautical Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on Draft Advisory Circular (AC) 21.101–1 Change 1,dated April 3, 2002, Advisory Material for the Establishment of the Certification Basis of Changed Aeronautical Products. This AC provides guidance for establishing the certification basis for changes made to aeronautical products. The FAA has issued a final rule, Type Certification Procedures for Changed Products, that amends the procedural regulations for the certification of changes made to type certification of aeronautical products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. This proposal AC provides guidance for determining compliance with those amended procedural regulations for the certification of all aircraft, aircraft engines, and propellers.

DATES: Comments must be received on or before June 5, 2002.

ADDRESSES: Address your comments to the Docket Management System. U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms/dot.gov. You may review the public docket containing comments to these proposed AC in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Randall Petersen, Certification Procedures Branch, AIR–110, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–9583, fax (202) 278–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this action by submitting written data, views, or arguments. In your comments, identify AC 21–101–1 Change 1, Advisory Material for the Establishment of the Certification Basis of Changed Aeronautical Products, and the regulatory docket number specified previously. Submit them in duplicate to the DOT Rules Docket address specified above.

The FAA will consider all comments received on or before the closing date for comments before issuing the final AC. The docket is available for public inspection before and after the comments closing date.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/htm* or the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces/140.html.*

Background

Final Rule

On June 7, 2000, the Type Certification Procedures for Changed Products final rule (65 FR 36244, June 7, 2000) became effective. The FAA established a mandatory compliance date of December 10, 2001, for transport category airplanes and restricted category airplanes that have been certificated using transport category standards; and a date of December 9,

2002, for all other category aircraft, engines, and propellers. The rule requires, among other things, that an applicant for a change to a type certificate must show the changed product complies with the certification requirements in effect on the date of application. (14 CFR 21.101(a)). The rule also states the applicant may show the changed product complies with an earlier amendment of a regulation if the Administrator determines the change is ''not-significant.'' (14 CFR 21.101(b)(1)). Specifically, determining the appropriate certification basis for each design change requires an assessment against the automatic criteria of ''significant'' as stated in the rule, coupled with the Administrator's discretionary right to consider the extent of the changes and related revisions to the regulations. (14 CFR 21.101(b)(1)(i) and (ii)).

On August 8, 2001, the FAA also published AC 21.101–1, providing guidance for the applicant to comply with the amended regulations for the certification of changes to transport category airplanes and restricted category airplanes that have been certified using transport category regulations.

During the fifteen months since publishing the rule, FAA, Transport Canada Civil Aviation, European Joint Aviation Authorities, and industry developed guidance material in the form of an advisory circular, a draft FAA Notice, and related training materials. The aviation industry has questioned the ability to standardize administrative procedures, raising a concern that implementation of the rule may not be uniform among the aviation manufacturing communities, both domestic and international. Based on this concern, FAA wants to ensure the implementation procedures for the rule provide for an equal and balanced application for all manufacturers, both domestic and international, and do not place an undue burden on FAA Aircraft Certification Offices and other civil aviation authorities. Accordingly, the FAA published a delay of all the compliance dates in the rule (66 FR 56989, November 14, 2001) to June 10, 2003.

Advisory Circular (AC)

To ensure a uniform application of this rule as it pertains to FAA's determination of ''significant'' and ''not-significant'' design changes, FAA has worked closely with the Joint Aviation Authorities and Transport Canada Civil Aviation to develop AC 21.101–1 Change 1. This advisory circular addresses the standardization concerns that precipitated the delay in implementing the rule until June 10, 2003, for all categories of aircraft, engines, and propellers.

AC 21.101–1 Change 1, will provide guidance for the applicant to comply with the amended regulations for the certification of changes to all aeronautical products. This AC will supercede Advisory Circular 21.101–1, dated August 8, 2001.

Issued in Washington, DC, on April 12, 2002.

David W. Hempe,

Manager, Aircraft Engineering Division.

[FR Doc. 02–9935 Filed 4–18–02; 2:31 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement, Panama City-Bay County International Airport, Panama City, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to announce to the public that an Environmental Impact Statement (EIS) will be prepared to consider alternatives to meet forecast growth in aviation demand in the Panama City-Bay County region.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, 407/812–6331, Extension 29.

SUPPLEMENTARY INFORMATION: The Panama City-Bay County International Airport (PFN), owned and operated by the Panama City-Bay County Airport and Industrial District (Sponsor), is located approximately five miles northwest of the central business district of Panama City, Florida. PFN has two 150-foot wide runways, Runway 5–23 and Runway 14–32. Runway 5–23 measures 4,888 feet in length and is primarily used by general aviation aircraft. Runway 14–32, with a length of 6,304 feet, serves as the primary runway for commercial airline service at PFN.

During the 1990s, an Environmental Assessment was initiated by the Sponsor to consider alternatives to provide an 8,000-foot runway at PFN. This study recommended an extension of Runway 14–32 to the northwest into Goose Bayou. However, the proposed extension would have environmental impacts to Class II waters that are protected under Florida state law. Due to opposition to the runway extension, the Environmental Assessment was deferred in 1998.

With support from the FAA and the Florida Department of Transportation (FDOT), the Sponsor initiated an effort in 1999 to study the feasibility of relocating or expanding the existing airport facilities. The *Feasibility Study* resulted in a determination that relocation of the airport was technically feasible. In 2000, the Sponsor completed a *Site Selection Study* to assist the Sponsor in deciding a preferred location of a relocated airport. The *Site Selection Study* recommended a preferred site, located north of County Road 388, east of State Road 79, south of State Road 20, and west of State Road 77. Relocation of the airport to the preferred site is the Sponsor's proposed project.

On November 7, 2001, the FAA published in the **Federal Register** a Notice of Intent to prepare an environmental Assessment to consider alternatives to meet forecast growth in aviation demand in the Panama City-Bay County region. Agency and public scoping meetings were held on December 13, 2001. Following review of written comments submitted by agencies and the public, and review of available information regarding the potential for significant environmental impacts, including impacts to 1,400–1,800 acres of wetlands, the FAA has determined that an Environmental Impact Statement (EIS) will be prepared for the project.

Alternatives to be considered in the EIS, in addition to the no action alternative, will include expansion alternatives at the existing airport site, the Sponsor's proposed project to relocate the airport to a new site, and other reasonable alternatives as determined during the FAA's alternatives analysis process. The EIS will evaluate the environmental impacts of all reasonable alternatives, including the evaluation of environmental impacts related to noise, air quality, water quality, land use, wetlands, ecological resources, floodplains, hazardous materials, historic and archaeological resources, environmental justice floodplains, and farmlands.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, April 9, 2002.

W. Dean Stringer,

Manager, Orlando Airports Districts Office.

[FR Doc. 02–9853 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–33]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 13, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 18, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11888.

Petitioner: Comair, Inc.

Section of 14 CFR Affected: 14 CFR 121.463(c).

Description of Relief Sought: To permit Comair to allow the required 5 hours of dispatcher operating familiarization time of 5 hours for the Canadiar Regional Jet CL–65 (CL–65) aircraft to fulfill the dispatcher operating familiarization time requirement for the CL–65 and the Embraer EMB–120 Brasilia aircraft (EMB–120), provided the dispatcher has been previously qualified on the EMB–120 and is undergoing recurrent training.

Docket No.: FAA–2001–11253.

Petitioner: Tyketube Industries, Inc.

Section of 14 CFR Affected: 14 CFR 91.107(a)(3)(iii)(B) and (a)(3)(iii)(C)(3); 121.311(b)(1), (b)(2)(ii), and (c)(1); 125.211(b)(2)(ii)(B), (b)(2)(ii)(C), (b)(2)(ii)(D), (c)(1), and (c)(2)(iv); and 135.128(a)(2)(ii)(B), (a)(2)(ii)(C), (a)(2)(ii)(D), and (b).

Description of Relief Sought: To permit any person who operates any aircraft, and any person on board any U.S.-registered civil aircraft to use an onboard infant restraint device (U.S. patent No. 5,224,229) that:

1. Is not manufactured to U.S. standards and that does not conform to all applicable Federal motor vehicle safety standards;

2. Is not manufactured to U.S. standards and is not certified for use in motor vehicles and aircraft; and

3. Has not been accepted by the FAA during all phases of flight, including critical phases of flight.

[FR Doc. 02–9944 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–32]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 13, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 18, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11565.

Petitioner: Franklin P. Toups.

Section of 14 CFR Affected: 14 CFR §§ 61.65(a)(1) and 61.153(d)(1).

Description of Relief Sought: To permit Franklin P. Toups to take a single check ride to obtain his ATP and instrument rating.

[FR Doc. 02–9945 Filed 4–22–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

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

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned four new tasks to the Aviation Rulemaking Advisory Committee to develop recommendations that will broaden current regulations and advisory material to include state-of-the-art flightdeck displays and new technologies to aid flight crewmembers in decision making. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Mike Kaszycki, Federal Aviation Administration, Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW., Renton, Washington, 98055; telephone: 425–227–2137; fax: 425–277–1320; e-mail: *mike.kaszycki@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Problem

Title 14 Code of Federal Regulations § 25.1322 describes standards for the color of warning, caution, advisory, and other message lights that are installed as annunciation displays in the flightdeck. It addresses visual alerting cues only in the form of colored lights installed in the flightdeck. The regulation became effective February 1 1977 (Amendment No. 25–38, 41 FR 44567, December 20, 1976) and has never been amended. It does not consider the use of corresponding aural tones/voice and prioritization of multiple alerts that may occur at the same time. Nor, does it consider new technologies, other than colored lights, that may be more effective in aiding the flightcrew in decision making. Further, § 25.1322 is outdated, does not address safety concerns associated with today's display systems, and has resulted in additional work for applicants when showing compliance, and for the FAA when addressing new flightdeck designs and the latest display technologies via special conditions and issue papers.

Advisory Circular (AC) 25–11, Transport Category Airplane Electronic Display Systems, contains guidance for demonstrating compliance with § 25.1322. The scope of the AC, which was published July 16, 1987, is limited and pertains strictly to cathode ray tube (CRT) based electronic display systems used for guidance, control, or decision making by the flightcrew. The guidance is clearly outdated in view of the computer-based and other advanced technological instruments used in transport category airplanes today.

Any rule or advisory circulars that results from this action would affect all new transport airplanes that are certified to part 25/Joint Aviation Requirements 25 (JAR–25). Both the FAA and industry agree that § 25.1322 is not appropriate for the current or future flightdeck design and the technologies associated with visual and aural annunciations to the flightcrew. This outdated regulation results in a potentially significant effect on airplane design, product design and technical standard orders, system integration, airplane type certifications and supplemental type certifications, costs associated with certifications, and flightcrew operation on airplane safety.

Tasking Statement

For the problem described above, the FAA tasked the ARAC [1] to:

1. Review and recommend revisions § 25.1322 that are necessary to bring the safety standards up-to-date; make the standards more appropriate for addressing current and future flightdeck design and technologies associated with visual and aural annunciation; and address prioritization of multiple alerts that may occur at the same time. At a minimum, the recommendations must consider airworthiness, safety, cost, recent certification and fleet experience, and harmonization of JAR 25.1322.

2. Review the existing Advisory Circular Joint (ACJ) 25.1322 and determine if a harmonized AC 25.1322 should be developed.

3. Identify any rules or advisory circulars that may conflict with the revised rule to determine if changes should be developed and address the proposed changes to §§ 25.1309 and 25.1329 that pertain to alerting.

4. Recommend revisions to AC 25–11 and ACJ 25–11.

a. Review AC 25–11 and ACJ 25–11 to develop harmonized advisory material. The harmonized guidance material may be significantly different from the existing material, but it must not conflict with the harmonized § 25.1322 standard.

b. Coordinate with other harmonization working groups in revising the advisory material. The Human Factors HWG is currently working a similar activity and should be consulted to ensure that any revised material has appropriate input and influence from the human factors discipline. Review and revision of the powerplant-related sections of AC 25–11 should be delegated to the Powerplant Installation HWG. The Flight Test HWG should review the flight test related sections.

c. Prepare a ''user needs analysis'' that addresses some unique requirements that are not fully met by the current guidance. (For example, manufacturers and installers of liquid crystal display based systems are considered ''users'' whose needs may not currently be met.)

d. Review other advisory circulars (such as AC's/ACJ's for various systems) and other industry documents to understand their relevance to AC 25–11. Additionally, recent industry activities have produced materials (for example, Aviation Recommended Practices) that may be useful in developing the harmonized AC.

e. Recommend a format of the advisory circulars that can accommodate future changes. The current AC/ACJ format is not conducive to additions as new systems are developed, new functions are identified, and new technologies are employed. The revised harmonized AC/ACJ should be formatted to accommodate future changes.

For each task, ARAC is to review airworthiness, safety, cost, and other relevant factors, including recent certification and fleet experience. ARAC will submit a report to the FAA (format and content to be determined by the FAA) that recommends revisions to the regulation, including cost estimates, and outlines the information and background for the advisory circulars.

If a notice of proposed rulemaking or notices of proposed advisory circulars are published for public comment as a result of the recommendations, ARAC may be further asked to review all comments received and provide the FAA with a recommendation for disposition of public comments for each project.

[1] In 1992, the FAA established the ARAC to provide advice and recommendations to the FAA Administrator on the agency's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

Schedule: The report and draft advisory circular is to be completed no later than 24 months after the FAA publishes the tasks in the **Federal Register**.

ARAC Acceptance of Tasks

ARAC accepted and assigned the task to the Avionics Systems Harmonization Working Group. The working group serves as staff to ARAC and assists in the analysis of the assigned task. ARAC must review and approve each working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. Recommendations that are received from ARAC will be submitted to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

Working Group Activity

The Avionics System Harmonization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completing each task, including the rationale supporting such a plan for consideration at the October 15–16, 2002, meeting of the ARAC on transport airplane and engine issues.

2. Give a detailed conceptual presentation of the proposed recommendations before proceeding with the work stated in item 3.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each ARAC meeting on transport airplane and engine issues.

Participation in the Working Group

The Avionics Systems Harmonization Working Group is composed of technical experts having an interest in the assigned tasks. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than (1 month after publication of the tasking statement). The requests will be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs. Individuals will be advised whether their request can be accommodated.

Individuals chosen for membership on the working group must represent their aviation community segment and actively participate in the working group (*e.g.,* attend all meetings, provide written comments when requested to do so, etc.). They must devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Avionics Systems Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on April 11, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–9947 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 02–01–C–00–MKL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McKeller-Sipes Airport, Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McKeller-Sipes Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 23, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Rodney Hendrix, Executive Director of the Jackson-Madison County Airport Authority at the following address: 308 Grady Montgomery Drive, Jackson, Tennessee 38301.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson-Madison County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Program Manager, Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, Tennessee 38116–3841. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McKeller-Sipes Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 11, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 2002.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2002.

Proposed charge expiration date: May 31, 2010.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $332,248.

Brief description of proposed project(s): Reimbursement of Sponsor's share of completed planning, airfield, equipment and terminal projects including: Master Plan Update, Aircraft Rescue and Firefighting vehicle, taxiway construction and rehabilitation, apron improvements, taxiway lighting, fencing, drainage improvements, terminal renovation and addition, PAPI

installation, airfield signage and lighting, relocation of Rotating Beacon, runway pavement rehabilitation and acquisition of land and construction of runway safety area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/on-demand air carriers filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 1701 Columbia Avenue, College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson-Madison County Airport Authority, 308 Grady Montgomery Drive, Jackson, Tennessee 38301.

Issued in Memphis, Tennessee on April 11, 2002.

Charles L. Harris,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 02–9852 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–11426]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 36 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: April 23, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

Thirty-six individuals petitioned FMCSA for an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Louis N. Adams, Guy M. Alloway, Lyle H. Banser, Paul R. Barron, Lloyd J. Botsford, Joseph E. Buck, Sr., Ronald M. Calvin, Rusbel P. Contreras, Timothy J. Droeger, Robert A. Fogg, Paul D. Gaither, David L. Grajiola, David L. Gregory, Walter D. Hague, Jr., Sammy K. Hines, Jeffrey J. Hoffman, Marshall L. Hood, Edward W. Hosier, Edmond L. Inge, Sr., James A. Johnson, Charles F. Koble, Robert W. Lantis, Lucio Leal, Terry W. Lytle, Earl R. Mark, James J. McCabe, Richard W. Neyens, Anthony G. Parrish, Bill L. Pearcy, Robert H. Rogers, Bobby C. Spencer, Mark J. Stevwing, Clarence C. Trump, Jr., Dennis R. Ward, Frankie A. Wilborn, and Jeffrey L. Wuollett.

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 36 petitions on their merits and made a determination to grant the exemptions to all of them. On March 7, 2002, the agency published notice of its receipt of applications from these 36 individuals, and requested comments from the public (67 FR 10471). The comment period closed on April 8, 2002. Four comments were received, and their contents were carefully considered by FMCSA in reaching the final decision to grant the petitions.

Vision And Driving Experience of the Applicants

The vision requirement provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10).

Since 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 36 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 42 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL or non-CDL, these 36 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in

interstate commerce. They have driven CMVs with their limited vision for careers ranging from 6 to 56 years. In the past 3 years, the 36 drivers had 9 convictions for traffic violations among them. Seven of these convictions were for Speeding. The other convictions consisted of: ''Violation of Red Light Signal'' and ''Improper Turning.'' Two drivers were involved in an accident in a CMV, but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a March 7, 2002, notice (67 FR 10471). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group is supported by the information published at 67 FR 10471.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 36 applicants receiving an exemption, we note that cumulatively the applicants have had only two accidents and nine traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 36 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. The comments were considered and are discussed below.

A letter was received from Babette E. Hosier, stating that drivers who have been driving in the past with visual impairment should be allowed to continue operating a CMV as long as their eye doctors report that they are capable of operating a CMV. FMCSA does not believe that vision exemptions should rest solely on the certification of an ophthalmologist or optometrist, for the reasons stated above under the heading ''Basis for Exemption Determination.''

Two individuals wrote in support of granting Mr. Hosier a vision exemption.

The Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, AHAS: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by AHAS were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 36 exemption applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), FMCSA exempts Louis N. Adams, Guy M. Alloway, Lyle H. Banser, Paul R. Barron, Lloyd J. Botsford, Joseph E. Buck, Sr., Ronald M. Calvin, Rusbel P. Contreras, Timothy J. Droeger, Robert A. Fogg, Paul D. Gaither, David L. Grajiola, David L. Gregory, Walter D. Hague, Jr., Sammy K. Hines, Jeffrey J. Hoffman, Marshall L. Hood, Edward W. Hosier, Edmond L. Inge, Sr., James A. Johnson, Charles F. Koble, Robert W. Lantis, Lucio Leal, Terry W. Lytle, Earl R. Mark, James J. McCabe, Richard W. Neyens, Anthony G. Parrish, Bill L. Pearcy, Robert H. Rogers, Bobby C. Spencer, Mark J. Stevwing, Clarence C. Trump, Jr., Dennis R. Ward, Frankie A. Wilborn, and Jeffrey L. Wuollett from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 18, 2002.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 02–9940 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–02–11585]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 24, 2002.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590. Docket No. NHTSA–02–11585.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public

comment on the following proposed collection of information:

Misuse of Child Restraints

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—December 31, 2003.

Summary of the Collection of Information—NHTSA proposes to collect information on misuse of child restraint systems (CRS) among the general public. The information collection would be conducted at public places frequently visited by drivers transporting infants and young children (age 8 and younger). Information would be collected from sites in six States selected to be representative of the nation as a whole. A total sample of 4,000 target vehicles (drivers with young children) would be used for the study. Participation by drivers would be voluntary. Initial contact would involve a project staff member asking drivers transporting one or more children in the selected public setting to participate in the information collection, which would take place immediately within that public setting if the driver agrees to participate. The information collection would consist of checking child restraint use in the vehicle, and interviewing the drivers. The interview would be comprised of questions to drivers relating to child passenger characteristics, driver socio-demographic characteristics, and knowledge of proper CRS use.

The proposed information collection would be anonymous and confidential. Drivers would not be asked their name nor asked for any other information that could be used to identify them or their passengers. No information would be recorded that could be used to identify study participants.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the number of deaths, injuries and economic losses resulting from motor vehicle crashes. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

Research on the effectiveness of child safety seats has found them to reduce fatal injury by 71 percent for infants and by 54 percent for toddlers in passenger cars. For infants and toddlers in light trucks, the corresponding reductions are 58 percent and 59 percent, respectively.

In the late 1970s and early 1980s, studies showed CRS use for infants and toddlers well below 50 percent. By the mid 1980s, all States had child restraint laws that required children below a certain age to travel in approved CRSs. The combination of State laws and public information and education programs was effective to some extent: by the mid 1990s restraint use by infants exceeded 80 percent and restraint use by toddlers had reached 60 percent. Yet while more infants and toddlers were being put into CRSs, studies conducted in the past decade have shown alarmingly high rates of misuse of these restraints (80 to over 95 percent). Studies have also found that many toddlers were being put prematurely into adult seat belts rather than staying in convertible seats or graduating to booster seats. Children are at greater risk of injury when improperly restrained in CRSs or prematurely placed into adult seat belts. In one study, crash-involved children ages 2 to 5 who were in adult seat belts were 3.5 times more likely to suffer significant injury and 4 times more likely to suffer head injury when compared to crash-involved children in the same age group who used child safety seats or booster seats.

The last major (multi-State) data collection effort to measure CRS misuse in a randomly selected general population at unadvertised site locations was conducted over six years ago. The environment for child passenger safety has changed significantly since then as a result of technological advances, new seating products, regulatory activity, educational activity, and other factors. It is important for NHTSA to identify the current status of CRS use and misuse among the public. The information will help NHTSA to identify areas where efforts need to be targeted and where new public information and education campaign strategies may be needed.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, information would be collected from 4000 randomly selected drivers transporting young children. Information collection would be conducted in public settings in six different States. Each driver would go through the information collection a single time.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—For each vehicle in the study, information collection would consist of checking the restraint use of children in the vehicle, and interviewing the driver. NHTSA estimates that the information collection would average 8.5 minutes per vehicle. This equates to an estimated 567 burden hours (4,000 driver participants multiplied by 8.5 minutes multiplied by 1 information collection). During part of that time, the driver would be a passive participant in the information collection as the study team checks the restraint use of the child(ren). The driver interview during the information collection would average 5 minutes in length (the interview would collect demographic information as well as information concerning drivers' knowledge, acquisition, and use of child safety seats). Thus the number of estimated reporting burden hours a year on the general public (4,000 driver participants multiplied by 5 minutes by 1 interview) would be 333 for the proposed study. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

Issued on: April 8, 2002.

Rose A. McMurray,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 02–9858 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10382; Notice 2]

International Truck and Engine Corporation; Denial of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

International Truck and Engine Corporation (International) of Fort Wayne, Indiana, has determined that approximately 801 vehicles produced from January 1, 1986, through January 16, 2001, do not comply with paragraph S5.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Motor Vehicles other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), International petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on August 24, 2001, with a 30-day comment period (66 FR 44663).

NHTSA received no comments on this application.

International built trucks, truck tractors, and buses with 295/75R22.5 tires mounted on 7.50 inch wide rims. Paragraph S5.1.1 of FMVSS No. 120 requires that vehicles be equipped with rims that are listed as suitable for use with the tires that are mounted on them in accordance with paragraph S5.1 of FMVSS No. 119, ''New Pneumatic Tires for Vehicles other than Passenger Cars.'' Paragraph S 5.1 of FMVSS No. 119 refers to the listing of rims that may be used with various tires in the ''Tire and Rim Association, Inc. (T&RA) Yearbook'', or another designated publication. According to T&RA, the approved rim widths for 295/75/R22.5 tires are between 8.25 and 9.00 inches.

The T&RA approved rim widths are based on an engineering guideline stating that the rim width should be 70 to 80 percent of the tire section width. International cited a statement in the T&RA Yearbook that the effect of using rims of different than design rim width is to change the tire section width by 0.1 inch for each 0.25 inch change in rim width. The section width for the 295/75R22.5 tires is 11.43 inches when mounted on an 8.25 inch wide rim. The tire section width is reduced to 11.13 inches when the tires are mounted on a 7.5 inch wide rim, resulting in a rim width that is about 67 percent or the tire section width. Theoretically, a 7.9 inch wide rim, which is not available (not in production), would be required for the subject tires to meet the T&RA engineering guideline that the rim width be 70 percent of the tire width. International concluded, therefore, that the 7.5 inch wide rim is 95 percent as wide as the 7.9 inch wide rim that would be required for 295/75R22.5 size tires under the 70 percent guideline (but not the width specified in the Year Book).

International stated that the noncompliant mounting of the 295/75R22.5 tires on the 7.5 inch wide rims is inconsequential to motor vehicle safety for the following reasons:

1. International customers have operated vehicles of various model types for 15 years with this combination of tire and rim, with no reported problems.

2. International has corrected its tire wheel assembly instruction charts and as of 1/17/01, it will no longer produce this non-compliant tire and rim combination.

3. Many of these vehicles probably have gone through several tire replacement cycles without reported problems.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the safety of the vehicles on which the noncompliant tire and rim combination is mounted. According to International, the 801 heavy duty trucks, truck tractors, and buses with this FMVSS No. 120 noncompliance are not likely to develop safety consequences. International has recognized that, compared to tires mounted on correctly sized rims, the tires mounted on rims that are too narrow may experience a decrease in sidewall durability, and may also experience higher treadwear for tires mounted on the steering axle. Although International asserted that these differences in tire wear are small and not likely to reduce the safety performance of the vehicles, the agency does not agree.

The purpose of this section of FMVSS No. 120 is to ensure that trucks and buses are equipped with rims and tires that are properly matched. The failure of International to meet the tire and rim matching requirements is a serious violation of the design requirements of the standard. Granting of this petition would establish a precedent that the mismatching of tires and rims is acceptable and, therefore, would undermine the enforceability of these requirements.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion, and that the noncompliance may have an adverse effect on the safety of these vehicles. Accordingly, International's application is denied and the company must provide notification of the noncompliance, as required by 49 U.S.C. 30118. Also, International must provide a free remedy of the noncompliance for all vehicles bought by the first purchaser ten calendar years or less before notice is given, as required by 49 U.S.C. 30120(g).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–9829 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–9426, Notice 2]

Mazda Motor Corporation, Grant of Application for Decision That a Noncompliance Is Inconsequential to Motor Vehicle Safety

Mazda Motor Corporation has determined that certain 2000 Mazda MPVs do not meet the maximum load rating requirements of paragraph S5.1 or the vehicle labeling requirements of paragraph S5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mazda has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on May 1, 2001, with a 30-day comment period (66 FR 21820). NHTSA received no comments on this application.

Mazda manufactured 19,569 model year 2000 MPVs equipped with 15-inch tires marked with a load rating that is not appropriate for the vehicle's certified rear gross axle weight rating (GAWR), a noncompliance with paragraph S5.1.2 of FMVSS No. 120. Mazda's Petition stated that the subject vehicles were equipped with tires that were incorrectly labeled with a load index of 92S and a maximum load rating 635 kg, but should have been labeled with a load rating of 94S and a maximum load rating of 670 kg. Further review of Mazda's Petition indicates that the P205/65R15 92S original equipment tires manufactured by Dunlop and Yokohama are correctly marked with a maximum load rating of 635 kg. However, both Dunlop and Yokohama provided Mazda with documentation stating that the subject tires passed the tests required for tires with a 94S tire load index, which corresponds to a maximum load rating of 670 kg. For the 2000 Mazda MPV, the 670 kg maximum load rating is sufficient to meet the requirements of FMVSS No. 120, paragraph S5.1.2, and is sufficient to bear the load for which the vehicle is rated.

Mazda argued that the noncompliance is inconsequential to motor vehicle safety because the original equipment tires, though labeled 635 kg, meet the requirements for tires with a load rating of 670 kg. Additionally, Mazda provided

the purchasers of the subject vehicles with a letter which reads in part as follows: ''Mazda has learned that on some vehicles equipped with Dunlop or Yokohama 15″ tires, the size specification stamped on the side-wall of the tire, the driver's door label and the tire specification label in the Owner's Manual is incorrectly marked as P205/65R15 92S. The correct tire size is 205/65/R15 94S. Additionally, the letter 'P' has been removed from the tire size number. As these tires meet the '94S' specification, they will not need to be replaced * * * If there is a need to replace any of these tires in the future due to normal wear, please make certain the replacement tires have the '94S' rating.''

Mazda's petition also stated that the company produced 6,036 vehicles with 15-inch steel rims that are noncompliant with the requirements of FMVSS No. 120, S5.2. These rims are marked with the correct size designation, rim manufacturer information, and date of production. However, the rims are not marked with a designation indicating the source of the rims' published nominal dimensions, as required by S5.2(a), or the ''DOT'' symbol required by S5.2(c).

Mazda argued that the noncompliance with S5.2(a) is inconsequential to motor vehicle safety because the dimensions for the 15X6JJ rim do not vary significantly among the different publication sources. Mazda has compared the dimensions of the 15X6JJ rims in the Japanese Automobile Tire Manufacturers Association and the Tire and Rim Association Year Books for the year 2000 and determined that the rims are interchangeable. According to Mazda, any rim of the correct size designation (15X6JJ) should be appropriate for use on the 2000 Mazda MPV. With respect to the DOT symbol marking, Mazda argued that the 15-inch steel rims comply with all federal requirements that may have an impact on motor vehicle safety and does not consider this noncompliance to be a safety problem.

The agency believes the true measure of inconsequentiality in the case of the noncompliance with FMVSS No. 120, paragraph S5.1.2 is the safety of the vehicles that are in noncompliance and the likelihood that the tires on these vehicles would be placed in an unsafe, overloaded situation. Mazda received documents from Yokohama and Dunlop stating that the subject tires meet the maximum load requirements for tires with a load rating of 670 kg, or a load index of 94S. Additionally, Mazda informed owners of the subject vehicles via letter that when the original equipment tires are replaced, they should be replaced with tires with a maximum load rating of at least 670 kg, or a 94S load index. The letter to the vehicle owners also informed the owners that the tire size information in the owner's manual and on the vehicle certification label contains errors and included corrected owner's manual insert pages and a revised certification/tire information label. Thus, the agency believes that the noncompliant tires would not be a safety problem.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with paragraph S5.2(a), is the likelihood that inappropriate rims may be installed on these vehicles. Based on the information provided by Mazda, the omission of the symbol designating the publication in which the rim dimensions can be obtained will not likely result in the use of rims with dimensions that are not appropriate for the vehicle. The rim size is properly labeled on these rims. The specifications for the significant dimensions (diameter, width, etc.) of 15X6JJ rims listed in the Tire and Rim Association's 2000 Year Book and the Japanese Automobile Tire Manufacturers Association's 2000 Year Book indicate that the rims are interchangeable. Since it is highly unlikely that a replacement rim of the proper size and type would have dimensions that are unsuitable for the Mazda vehicles, the agency believes the noncompliance is inconsequential to motor vehicle safety.

The ''DOT'' symbol is marked on tires, tire rims, motor vehicle equipment items, and motor vehicles to certify compliance with various safety standards. The agency regards the noncompliance with paragraph S5.2(c) as a failure to comply with the certification requirements of 49 U.S.C. 30115, and not a compliance failure requiring notification and remedy.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance with FMVSS No. 120, paragraphs S5.1 and S5.2, are inconsequential to motor vehicle safety. Accordingly, Mazda's application is granted and the company is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and .501.8)

Issued on: April 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–9828 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10696; Notice 2]

Volkswagen of America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc., (Volkswagen) has determined that approximately 225,000 vehicles produced between 1977 and August 6, 2001, do not meet the labeling requirements of paragraph S5.3(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on October 3, 2001, in the **Federal Register** (66 FR 50499). NHTSA received no comments.

The noncompliant vehicles were produced by Volkswagen AG and were imported by Volkswagen. The noncompliance relates to MPVs produced and imported under the Vanagon and EuroVan model designations. On these vehicles, the manufacturer did not include tire size and rim designation on the certification label specified by 49 CFR part 567, but rather utilized the option in S5.3(b) of FMVSS 120 to provide that information on the separate tire information label. In doing so however, Volkswagen neglected to include the required vehicle GVWR and GAWR information on the tire information label.

Volkswagen believes that the failure of the tire information label to include the vehicle weight values is inconsequential to motor vehicle safety because the weights are included on the certification label and both labels are mounted on the driver side B-pillar of the vehicle.

Consumers interested in the vehicle weights would be able to find the values on the certification label where they are

included pursuant to the requirements of Section 567.4.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 120, paragraph S5.3, is whether the GVWR and GAWR information is readily available to consumers. One of the reasons that FMVSS No.120 requires that both labels include the GVWR and GAWR information is the fact that the labels need not be located close to one another. According to Volkswagen, the vehicle certification label, which includes the GVWR and GAWR, and the tire information label are adjacent to one another on the noncompliant vehicles. Both labels are mounted on the driver's side B-pillar, negating the need for both labels to include the GVWR and GAWR information. The agency believes this reduces the likelihood that consumers would not be able to locate this information.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Volkswagen's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–9830 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10695; Notice 2]

Volkswagen of America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc., (Volkswagen) has determined that approximately 5,772 vehicles produced between July 2000 and June 22, 2001, do not meet the labeling requirements of paragraph S5.3(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on October 3, 2001, in the **Federal Register** (66 FR 50500). NHTSA received no comments.

The noncompliant vehicles were produced by Audi AG and were imported by Volkswagen. The noncompliance relates to MPVs produced and imported under the Audi Allroad Quattro model designation. On these vehicles, the manufacturer did not include tire size and rim designation on the certification label specified by 49 CFR part 567, but rather utilized the option in S5.3(b) of FMVSS 120 to provide that information on the separate tire information label. In doing so however, Volkswagen neglected to include the required vehicle GVWR and GAWR information on the tire information label.

Volkswagen believes that the failure of the tire information label to include the vehicle weight values is inconsequential to motor vehicle safety because the weights are included on the certification label and both labels are mounted on the driver side B-pillar of the vehicle. Consumers interested in the vehicle weights would be able to find the values on the certification label where they are included pursuant to the requirements of Section 567.4.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 120, paragraph S5.3, is whether the GVWR and GAWR information is readily available to consumers. One of the reasons that FMVSS No.120 requires that both labels include the GVWR and GAWR information is the fact that the labels need not be located close to one another. According to Volkswagen, the vehicle certification label, which includes the GVWR and GAWR, and the tire information label are adjacent to one another on the noncompliant vehicles. Both labels are mounted on the driver's side B-pillar, negating the need for both labels to include the GVWR and GAWR information. The agency believes this reduces the likelihood that consumers would not be able to locate this information.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Volkswagen's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: April 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–9831 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change and Change in State of Incorporation—Commercial Casualty Insurance Company of Georgia

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 20 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Commercial Casualty Insurance Company of Georgia has formally changed its name to Commercial Casualty Insurance Company of North Carolina and has redomesticated from the state of Georgia to the state of North Carolina, effective December 21, 2001. The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35033, July 2, 2001.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 revision, on page 35033 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 11, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–9924 Filed 4–22–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Chrysler Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 23 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: CHRYSLER INSURANCE COMPANY, a Micigan corporation, has formally changed its name to DaimlerChrysler Insurance Company, effective June 30, 2001. The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35032, July 2, 2001.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to DaimlerChrysler Insurance Company. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $19,610,000 established for the June 30, 2002.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revisions, at page 35032 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 15, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–9927 Filed 4–22–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Employers Insurance of Wausau a Mutual Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 21 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: EMPLOYERS INSURANCE OF WAUSAU A Mutual Company, a Wisconsin corporation, has formally changed its name to Employers Insurance Company of Wausau, effective November 21, 2001. The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35034, July 2, 2001.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Employers Insurance Company of Wausau, Wausau, Wisconsin. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $5,050,000 established for the Company as of July 2, 2001, remains unchanged until June 30, 2002.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revision, at page 35034 to reflect this change.

The Circular may be viewed and downloaded through the Internet (*http://fms.trea.gov/c570/index.html*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordered the Circular from GOP, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be delivered to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 11, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–9925 Filed 4–22–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Pacific Indemnity Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 19 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7116.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revision, on page 35050 to reflect this addition:

Company Name: Pacific Indemnity Insurance Company, Business Address: 378 W. O'Brien Drive, Agana, and GU 96932, Phone: (671) 477–8801, Underwriting Limitation b/: $302,000, Surety Licenses c/: GU. Incorporated In: Guam.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 5, 2002.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–9923 Filed 4–22–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Statewide Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 22 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7116.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35056, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 11, 2002.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 02–9926 Filed 4–22–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form CT–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form CT–1, Employer's Annual Railroad Retirement Tax Return.

DATES: Written comments should be received on or before June 24, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Railroad Retirement Tax Return.

OMB Number: 1545–0001.

Form Number: Form CT–1.

Abstract: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) taxes. Form CT–1 is used for this purpose. The IRS uses the information to insure that the employer has paid the correct tax.

Current Actions:

Changes to Form CT–1:

The railroad retirement bill, Act section 203(b), repealed the supplemental annuity work-hour tax and the special supplemental annuity tax (code sections 3221(c) and (d)), effective for years beginning after December 31, 2001. Due to the repealed, Part I of Form CT–1, lines 1 through 4 and line 18 were deleted along with the safe harbor checkbox above line 1. Also, Part II of Form CT–1, the lines for Supplemental Annuity Work-Hour Tax each quarter were deleted, and the lines for Special Supplemental Annuity Tax for their third quarter were deleted.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 2,387.

Estimated Time Per Respondent: 19 hours, 22 minutes.

Estimated Total Annual Burden Hours: 46,206.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–9668 Filed 4–22–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for work-study benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0209'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8691.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement (Student Services), VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Eligible veterans, Selected Reservists, and survivors or dependents complete VA Form 22–8691 to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her contract.

d. A claimant who doesn't want the work-study advanced allowance payment uses VA Form 22–8692b.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,184.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961 '' 5,500 hours.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692–1,667 hours.

c. Extended Student Work-Study Agreement, VA Form 22–8692a–350 hours.

d. Work-Study Agreement (Student Services), VA Form 22–8692b–1,667 hours.

Estimated Average Burden Per Respondent: 7 minutes.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961–10 minutes.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692–5 minutes.

c. Extended Student Work-Study Agreement, VA Form 22–8692a–3 minutes.

d. Work-Study Agreement (Student Services), VA Form 22–8692b–5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961–33,000.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692–20,000.

c. Extended Student Work-Study Agreement, VA Form 22–8692a–7,000.

d. Work-Study Agreement (Student Services), VA Form 22–8692b–20,000.

Dated: April 11, 2002.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–9876 Filed 4–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a credit underwriter's experience.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0253'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: The standards established by VA require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards. To determine if the lender's nominee is qualified to make such a determination, VA has developed VA Form 26–8736a that contains information that VA considers crucial to the evaluation of an underwriter's experience. The form is completed by the lender and the lender's nominee for underwriting and then submitted to VA for approval.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: April 11, 2002.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–9877 Filed 4–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize grants for specially adapted housing for disabled veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0031'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by Loan Guaranty personnel in approving the benefits available under 38 U.S.C. 2101(a). The information requested is necessary in order to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

Affected Public: Individuals or households.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 600.

Dated: April 11, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–9878 Filed 4–22–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 78

Tuesday, April 23, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Stakeholder Forum on Alternative Technologies to Incineration

Correction

In notice document 02–9194 appearing on page 18600 in the issue of Tuesday, April 16, 2002, make the following correction:

On page 18600, in the second column, above the signature line, ''April 18, 2002'' should read ''April 8, 2002''.

[FR Doc. C2–9194 Filed 4–22–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 00-256 and 96-45; FCC 02-89]

Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

Correction

In rule document 02–7997 beginning on page 15490 in the issue of Tuesday, April 2, 2002, make the following correction:

§54.903 [Corrected]

On page 15493, in the first column, in §54.903, in amendatory instruction numbered 2., in the fourth line, ''March 18, 2002'', should read ''April 18, 2002''.

[FR Doc. C2–7997 Filed 4–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–42–AD; Amendment 39–12695; AD 2002–07–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 Series Airplanes

Correction

In rule document 02–7645 beginning on page 15714 in the issue of Wednesday April 3, 2002, the table is corrected make the following correction:

§39.13 [Corrected]

On page 15716, in the first column, in §39.14, the table should read as set forth below:

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Maintenance Records Check: (i) Check the maintenance records to determine whether a horizontal stabilizer attachment reinforcement bracket, part number (P/N) 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check. (ii) If, by checking the maintenance records, the owner/operator can positively show that a horizontal stabilizer attachment reinforcement bracket, P/N 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is not installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 50 hours time-in-service (TIS) after May 13, 2002 (the effective date of this AD), unless already accomplished.	No special procedures required to check the logbook.
(2) Inspection: Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange.	Within the next 50 hours TIS after May 13, 2002 (the effective date of this AD), unless already accomplished.	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00-10, dated November 6, 2000, and the applicable maintenance manual.
(3) Replacement:	Accomplish any necessary replacements prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00–10, dated November 6, 2000, and the applicable maintenance manual.

Actions	Compliance	Procedures
(i) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(2) of this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket..		
(ii) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required.		
(4) Installation Prohibition: Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket:.	As of May 13, 2002 (the effective date of this AD).	Not applicable.
(i) is inspected as required in paragraph (d)(2) of this AD; and.		
(ii) has seam welds along both the lower inboard and outboard wall/flange..		

[FR Doc. C2–7645 Filed 4–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–86–AD; Amendment 39–12699; AD 2002–07–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R Series Airplanes; and Model A300 F4–605R Airplanes

Correction

In rule document 02–8278 beginning on page 16983 in the issue of Tuesday, April 9, 2002, make the following correction:

§ 39.13 [Corrected]

On page 16985, § 39.13, in column 2 of Table 3, in the ninth line,''12,00'' should read ''12,000''.

[FR Doc. C2–8278 Filed 4–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 181

[T.D. 02–15]

RIN 1515–AD08

North American Free Trade Agreement

Correction

In rule document 02–8053 beginning on page 15480 in the issue of Tuesday, April 2, 2002, make the following corrections:

1. On page 15481, in the third column, in the second paragraph, paragraph numbered 4., in the seventh line, ''cots'' should read ''costs ''.

2. On page 15482, in the first column, in the ninth line of paragraph numbered five, ''cases'' should read ''case''.

3. On the same page, in the same column, in the same paragraph, in line fourteen, ''or'' should read ''of''.

4. On the same page, in the same column, the fifth to the last line of paragraph numbered 6., ''year of production of the materials of '' should read ''year of production of the materials or''.

5. On the same page, in the same column, in the same paragraph, in the fourth from the last line, ''this'' should read ''the''.

6. On page 15482, in the second column, in the third full paragraph, the second sentence should read, ''This change involves replacing the reference to tariff items ''2106.90.16 and 2106.90.17'' by a reference to tariff items ''2106.90.48 and 2106.90.52'' within paragraph (c) of subsection (4) under Section 5 of Part II''.

Appendix to Part 181 [Corrected]

1. On page 15483, in the second column, in the fourth line of paragraph (4)(i), ''subheading'' should read ''subheadings''.

2. On the same page, in the same column, in the same paragraph in the fifth line, ''8414.10'' should read ''8418.10''.

3. On the same page, in the same column, under SECTION 7. MATERIALS, in paragraph (16)(a) ''materials. '' should read ''materials ''.

4. On page 15484, in the first column, the heading ''SECTION 4.1'' should read ''SECTION 4.1.''.

5. On the same page, in the same column, under the heading SECTION 12, ''A producer of a good, or a person from whom the producer accquired the fungible good'' should read ''An exporter of a good, or a person from whom the exporter acquired the fungible good ''.

[FR Doc. C2–8053 Filed 4–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 23, 2002

Part II

Department of the Interior

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the San Bernardino Kangaroo Rat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH07

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the San Bernardino Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 13,485 hectares (33,295 acres) in San Bernardino and Riverside Counties, California, are designated as critical habitat for the San Bernardino kangaroo rat.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

DATES: This rule is effective May 23, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) (telephone: 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall and Kelson 1959, Williams *et al.* 1993). In coastal southern California, Merriam's kangaroo rat is the only species of kangaroo rat with four toes on each of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9.0 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is pale yellow with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The flanks and cheeks of the subspecies are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and smaller than either of the other two subspecies of Merriam's kangaroo rat that occur in southern California, *D. merriami merriami* and *D. merriami collinus.* The San Bernardino kangaroo rat, endemic to southern California, is one of the most highly differentiated subspecies of Merriam's kangaroo rat and, according to Lidicker (1960), ''it seems likely that it has achieved nearly species rank.''

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades (1894) under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California. Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901, a taxonomic treatment of the species which was confirmed by Hall and Kelson (1959) and Williams *et al.* (1993). The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by an 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat.

The historical range of this species extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Hall and Kelson 1959, Lidicker 1960). Prior to 1960, the San Bernardino kangaroo rat was known from more than 25 localities within this range (McKernan 1993). From the early 1880s to the early 1930s, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto Valleys of southern California (Lidicker 1960). At the time of listing, based on the distribution of apparent suitable soils and museum collections of this species, we estimated that the historical range encompassed approximately 130,587 hectares (ha) (326,467 acres (ac)) (63 FR 51005). Recent studies indicate that the species occupies a wider range of soil and vegetation types than previously thought (Braden and McKernan 2000), which suggests that the species' historical range may have been larger than we estimated at the time of listing.

Although the entire area of the historical range would not have been occupied at any given time due to hydrological processes and resultant variation in habitat suitability, the San Bernardino kangaroo rat was widely distributed across the San Bernardino and San Jacinto valleys. By the 1930s, suitable habitat had been reduced to approximately 11,200 ha (28,000 ac) (McKernan 1997). Habitat destruction continued such that in 1997 the San Bernardino kangaroo rat was thought to occupy only 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations (McKernan 1997). At the time of listing, we estimated that an additional 5,277 ha (13,193 ac) of habitat distributed within the Santa Ana River, Lytle and Cajon creeks, and San Jacinto River was also likely occupied by the San Bernardino kangaroo rat (63 FR 51005). Unlike the three largest habitat blocks, we did not provide an estimate for additional habitat that was likely occupied for the smaller remnant populations at City Creek, Etiwanda alluvial fan and wash, Reche Canyon, and South Bloomington (including Jurupa Hills). At the time of listing, we discounted approximately 1,358 ha (3,396 ac) of the 5,277 ha (13,193 ac) of additional habitat as being too mature or degraded to support San Bernardino kangaroo rats. Additional research following the listing of the species has indicated that San Bernardino kangaroo rats can occupy mature alluvial sage scrub, coastal sage scrub, and even chaparral vegetation types (McKernan 2000). Moreover, systematic and general biological surveys have resulted in the documentation of additional populations of the San Bernardino kangaroo rat, within and outside areas previously known to be occupied by the species. Consequently, based on information relative to habitat usage and species' distribution obtained since the listing, we significantly underestimated the amount of area occupied by the species at the time of listing. Thus, within the areas designated as critical habitat, a minimum of approximately 13,155 ha (32,480 ac) of habitat are believed to be occupied by the San Bernardino kangaroo rat.

On December 8, 2000, we proposed 22,423 ha (55,408 ac) of lands for designation as critical habitat in the Santa Ana River (including City and Plunge Creeks), Lytle and Cajon Creeks, San Jacinto River and Bautista Creek, and the Etiwanda alluvial fan (65 FR 77178). The areas proposed and refined

for this final rule are within the known historical range for this species. However, the majority of the remaining San Bernardino kangaroo rat populations are primarily found in three areas, the Santa Ana Wash, the San Jacinto Wash, and Lytle Creek and Cajon Wash. Other smaller populations of the San Bernardino kangaroo rat are documented in washes and hills in the areas surrounding the three main population centers. Several of the areas containing these smaller populations were proposed as critical habitat, but upon re-evaluation were not included in this final designation because they were determined not to be essential to the long-term conservation of the San Bernardino kangaroo rat. The basis for this determination and removing them from the final designation was information indicating that the small scattered populations or habitats occurred in areas that were highly fragmented by urban and agricultural development and/or no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial sage scrub vegetation. However, even though we believe that these habitat areas are not essential to the long-term conservation of the San Bernardino kangaroo rat, they are still considered important and may assist in recovery efforts.

Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto valleys, resulting in reduced habitat patch size and increased distances between patches of suitable habitat. As noted by Andren (1994) in a discussion of highly fragmented landscapes, reduced habitat patch size and isolation exacerbate the effects of habitat loss on a species' persistence (*i.e.,* the loss of species, or decline in population size, will be greater than expected from habitat loss alone) and may preclude recolonization of suitable habitat following local extirpation events.

The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soulé *et al.* 1992, Andren 1994, Bolger *et al.* 1997). Results of habitat fragmentation on rodents may include increased extirpation rates due to increased vulnerability to random demographic (population characteristics such as age and sex structure) and environmental events (Hanski 1994, Bolger *et al.* 1997). For example, isolated populations are more susceptible to local extirpation by manmade or natural events, such as disease or floods, than are larger, more connected populations. Furthermore, small populations are more likely to experience detrimental effects associated with reproduction (*e.g.,* genetic drift, inbreeding depression, and a loss of genetic variability) and increase the risk of extinction (Caughley 1994, Lacy 1997). Past and ongoing causes of fragmentation of San Bernardino kangaroo rat habitat include conversion of lands to urban, industrial, agricultural, and recreational uses; construction of roads and freeways; and development of flood control structures such as dams, levees, detention basins, and channels. The effect of these human-caused disturbances is three-fold—(1) they reduce the amount of suitable habitat for the San Bernardino kangaroo rat, breaking large areas into smaller patches, (2) they act as barriers to movement between the remaining suitable habitat patches, and (3) they disrupt, preclude, or alter natural processes necessary to maintain suitable habitat (*i.e.,* sediment scour and deposition).

San Bernardino kangaroo rats are typically found on alluvial fans (relatively flat or gently sloping masses of loose rock, gravel, and sand deposited by a stream as it flows into a valley or upon a plain), floodplains, along washes, in adjacent upland areas containing appropriate physical and vegetative characteristics (McKernan 1997), and in areas with historic braided channels (R. McKernan, Curator, San Bernardino County Museum, pers. comm., 2002). These areas consist of sand, loam, sandy loam, or gravelly soils (McKernan 1993, Braden and McKernan 2000) that are associated with alluvial processes (*i.e.,* the scour and deposition of clay, silt, sand, gravel, or similar material by running water such as rivers and streams; debris flows). San Bernardino kangaroo rats also occupy areas where winds contribute to the deposition of sandy soils (*e.g.,* northwest of the Jurupa Hills) (McKernan 1997). The soils deposited by alluvial or wind driven processes typically support alluvial sage scrub and chaparral vegetation and allow kangaroo rats to dig simple, shallow burrow systems (McKernan 1997).

Alluvial sage scrub has been described as a variant of coastal sage scrub (Smith 1980) and is also referred to as Riversidean alluvial fan scrub, alluvial fan sage scrub, cismontane alluvial scrub, alluvial fan scrub, or by Holland (1986) as Riversidian Alluvial Fan Sage Scrub. This relatively open vegetation type is adapted to periodic flooding and erosion (Hanes *et al.* 1989) and is comprised of an assortment of drought-deciduous shrubs and larger evergreen woody shrubs characteristic of both coastal sage scrub and chaparral communities (Smith 1980).

Three phases of alluvial sage scrub have been described: Pioneer, intermediate, and mature. The phases are thought to correspond to factors such as flood scour, distance from flood channel, time since last flood, and substrate features (Smith 1980, Hanes *et al.* 1989). Under natural conditions, flood waters periodically break out of the main river channel in a complex pattern, resulting in a braided appearance to the floodplain and a mosaic of vegetation stages. Pioneer sage scrub, the earliest phase, is subject to frequent hydrological disturbance and the sparse vegetation is usually renewed by frequent floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, which is typically found on benches between the active channel and mature floodplain terraces, is subject to periodic flooding at longer intervals. The vegetation of early and intermediate stages is relatively open, and supports the highest densities of the San Bernardino kangaroo rat (McKernan 1997).

The oldest, or mature, phase of alluvial sage scrub is rarely affected by flooding and supports the highest plant density (Smith 1980). Although mature areas are generally used less frequently by the kangaroo rats or occupied at lower densities than those supporting earlier phases, these areas are essential for the conservation of the species. Shallow burrows, such as those inhabited by the San Bernardino kangaroo rats, are likely to become inundated or lost due to scour and sediment deposition during flooding events. Therefore, mature phase alluvial scrub areas can serve as refugia for San Bernardino kangaroo rats from lower portions of the floodplain during large scale flooding events, and they can support source populations for recolonization of the lower floodplain areas after the flooding has subsided. Due to the dynamic nature of the alluvial floodplain, all three elevations within the floodplain and the associated phases of alluvial scrub habitat are essential to the long-term survival of the San Bernardino kangaroo.

Alluvial sage scrub vegetation includes plant species that are often associated with coastal sage scrub, chaparral, or desert transition communities. Common plant species found within these plant communities may include: *Lepidospartum squamatum* (scalebroom), *Eriogonum fasciculatum* (California buckwheat), *Eriodictyon crassifolium* (wooly yerba santa), *Eriodictyon trichocalyx* (hairy

yerba santa), *Yucca whipplei* (our Lord's candle), *Rhus ovata* (sugar bush), *Rhus integrifolia* (lemonadeberry), *Malosma laurina* (laurel sumac), *Juniperus californicus* (California juniper), *Baccharis salicifolia* (mulefat), *Penstemon spectabilis* (showy penstemon), *Heterotheca villosa* (golden aster), *Eriogonum elongatum* (tall buckwheat), *Encelia farinosa* (brittle bush), *Opuntia* spp. (prickly pear and cholla), *Adenostoma fasciculatum* (chamise), *Prunus ilicifolia* (holly-leaf cherry), *Quercus* spp. (oaks), *Salvia apiana* (white sage), and annual forbs (*e.g., Phacelia* spp. (phacelia), *Lupinus* spp. (lupine), and *Plagiobothrys* spp. (popcorn flower)), and native and nonnative grasses.

Similar to other subspecies of Merriam's kangaroo rat, the San Bernardino kangaroo rat prefers moderately open habitats characterized by low shrub canopy cover (McKernan 1997). However, the species uses areas of denser vegetation (Braden and McKernan 2000). McKernan (pers. comm., 2000) further stated that such areas are essential to San Bernardino kangaroo rat conservation. Research conducted by Braden and McKernan (2000) during 1998 and 1999 demonstrated that areas with late phases of the floodplain vegetation, such as mature alluvial fan sage scrub and associated coastal sage scrub and chaparral, including some areas of moderate to dense vegetation such as nonnative grasslands, are at least periodically occupied by the species.

A study of San Bernardino kangaroo rats conducted by Braden and McKernan (2000) provided additional new, specific data about the habitat characteristics in which the species was found. While this study indicated the range of habitat characteristics in which the species can occur, it was not designed to describe habitat preferences for the species. Braden and McKernan determined that within habitat occupied by the San Bernardino kangaroo rat: (1) Perennial cover varies from 0 to 100 percent; (2) annual cover (primarily nonnative grasses) varies from 0 to 70 percent; (3) the proportion of surface fine sands varies from 0 to 100 percent; (4) surface cover of small rock fragments varies from 0 to 90 percent; and (5) surface cover of large rock fragments varies from 0 to 51 percent. The San Bernardino kangaroo rat has also been documented in areas of human disturbance not typically associated with the species, including nonnative grasslands, margins of orchards and out-of-use vineyards, alluvial sage scrub, and areas of wildland/urban interface within floodplains or terraces and adjacent to occupied habitat (McKernan, *in litt.* 2000).

Areas that contain low densities of San Bernardino kangaroo rats may be important for dispersal, genetic exchange, colonization of newly suitable habitat, and re-colonization of areas after severe storm events. The dynamic nature of the alluvial habitat leads to a situation where not all the habitat associated with alluvial processes is suitable for the species at any point in time. However, areas generally considered unsuitable habitat, such as out-of-production vineyards and margins of orchards, can and do develop into suitable habitat for the species through natural processes (McKernan, pers. comm., 2000).

Little is known about home range size, dispersal distances, or other spatial requirements of the San Bernardino kangaroo rat. However, home ranges for the Merriam's kangaroo rat in the Palm Springs, California, area averaged 0.33 ha (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Furthermore, Blair (1943) reported much larger home ranges for Merriam's kangaroo rats in New Mexico, where home ranges averaged 1.7 ha (4.1 ac) for males and 1.6 ha (3.8 ac) for females. Space requirements for the San Bernardino kangaroo rat likely vary according to season, age and sex of animal, food availability, and other factors. Although outlying areas of their home ranges may overlap, *Dipodomys* adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993). The degree of competition between San Bernardino kangaroo rats and sympatric (living in the same geographical area) species of kangaroo rats for food and other resources is not presently known.

Similar to other kangaroo rats, the Merriam's kangaroo rat is generally granivorous (feeds on seeds and grains) and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993).

Wilson *et al.* (1985) reported that compared to other rodents, Merriam's kangaroo rat, and heteromyids in general, have relatively low reproductive output. Rainfall and the availability of food have been cited as factors affecting kangaroo rat populations. Droughts lasting more than a year can cause rapid declines in population numbers after seed caches are depleted (Goldingay *et al.* 1997).

Little information exists on the specific types and local abundances of predators that feed on the San Bernardino kangaroo rat. Potential native predators include the common barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), long-eared owl (*Asio otus*), gray fox (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), long-tailed weasel (*Mustela frenata*), bobcat (*Felis rufus*), badger (*Taxidea taxus*), San Diego gopher snake (*Pituophis melanoleucus annectens*), California king snake (*Lampropeltis getulus californiae*), red diamond rattlesnake (*Crotalus ruber*), and southern Pacific rattlesnake (*Crotalus viridus*). Domestic cats (*Felis cattus*) are known to be predators of native rodents (Hubbs 1951, George 1974) and have the ability to reduce population sizes of rodents (Crooks and Soulé 1999). Predation of San Bernardino kangaroo rats by domestic cats has been documented (McKernan, pers. comm., 2000). Continued fragmentation of habitat is likely to promote higher levels of predation by native animals (Bolger *et al.* 1997) and urban-associated animals (*e.g.,* domestic cats, opossums (*Didelphis virginianus*), and striped skunks (*Mephitis mephitis*)) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987).

A limited amount of data exists pertaining to population dynamics of the San Bernardino kangaroo rat. Information is not currently available on several aspects of the species' life history such as fecundity (the capacity of an organism to produce offspring), survival, population age and sex structure, intra- and interspecific competition, and causes and rates of mortality. With respect to population density, Braden and McKernan (2000) documented substantial annual variation on a trapping grid in San Bernardino County, where densities ranged from 2 to 26 animals per ha (2.47 ac). The reasons for these greatly disparate values during the 15-month study are unknown. These fluctuations bring to light several important aspects of the species' distribution and life history which should be considered when identifying areas essential for the conservation of the species—(1) a low population density observed in an area at one point in time does not mean the area is occupied at the same low density any other month, season, or year; (2) a low population density is not an indicator of low habitat quality or low overall value of the land for the conservation of the species; (3) an

abundance of San Bernardino kangaroo rats can decrease rapidly; and (4) one or more factors (*e.g.,* food availability, fecundity, disease, predation, genetics, environment) are strongly influencing the species' population dynamics in one or more areas. High-amplitude, high-frequency fluctuations in small, isolated populations make them extremely susceptible to local extirpation.

Previous Federal Action

The San Bernardino kangaroo rat was emergency listed as endangered on January 27, 1998; concurrently, a proposal to make provisions of the emergency listing permanent was also published in the **Federal Register** (63 FR 3835 and 63 FR 3877, respectively). On September 24, 1998, we published a final rule determining the San Bernardino kangaroo rat to be an endangered species under the Act (63 FR 51005). Critical habitat was determined not to be prudent at the time of listing because an increase in the degree of threat and the lack of benefit to the species (63 FR 51005).

On March 4, 1999, the Southwest Center for Biological Diversity and Christians Caring for Creation filed a lawsuit in the Federal District Court for the Northern District of California challenging our failure to designate critical habitat for the San Bernardino kangaroo rat and six other federally listed species. A settlement agreement was entered into on November 3, 1999, in which we were to re-evaluate the prudency of designating critical habitat. If designation of critical habitat for the San Bernardino kangaroo rat was determined to be prudent, we would publish a proposed rule critical habitat designation by December 1, 2000, and a final designation by December 1, 2001.

In accordance with the stipulated settlement agreement, we re-evaluated the not prudent finding as determined at the time of listing. Following our re-evaluation, we determined that critical habitat was, in fact, prudent and published a proposed rule to designate critical habitat on December 8, 2000 (65 FR 77178). A discussion of our re-evaluation of the prudency of designating critical habitat for the San Bernardino kangaroo rat is contained within the Previous Federal Action section of our rule proposing the designation (65 FR 77178).

Following delayed completion of the draft economic analysis for the proposed designation and time required to hold public hearings, we requested a 90-day extension from the plaintiffs to adequately address public comments and complete the final designation. On November 19, 2001, the plaintiffs agreed to the extension. The District Court subsequently approved the 90-day extension requiring us to complete the final designation by March 1, 2002. Through agreement of the parties, this deadline was subsequently extended to April 15, 2002.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In regulations at 50 CFR 402.02, we define destruction or adverse modification as ''...the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirements for these actions.

The designation of critical habitat does not, in itself, lead to the recovery of a listed species. The designation of critical habitat does not create a management plan, establish a preserve, reserve, or wilderness area where no actions are allowed, it does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat at the time of listing to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we often may not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we are designating only areas currently known to be essential. Essential areas contain the features and habitat characteristics that are necessary to sustain the species, as defined at 50 CFR 424.12(b). We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. Moreover, certain known populations of the San Bernardino kangaroo rat have not been designated as critical habitat. We did not designate critical habitat for small scattered populations or habitats which were in areas that were highly fragmented by urban and agricultural development or were no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial sage scrub vegetation (the primary plant community containing its habitat) because we do not believe that these areas are essential to the conservation of the species based on current scientific and commercial information.

Based on the limited and fragmented range of the San Bernardino kangaroo rat, we are including 330 ha (815 ac) of habitat determined to be essential to the conservation of the San Bernardino kangaroo rat that is not currently known to be occupied. This area is located in Riverside County at the northern end of the San Jacinto Unit (Unit 3). A more detailed discussion of this area and the rationale as to why it is essential to the

conservation of the San Bernardino kangaroo rat is contained in the description for this critical habitat unit.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. This policy requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan; articles in peer-reviewed journals; conservation plans developed, or under development, by States and counties; scientific status surveys and studies; and biological assessments or other unpublished materials (*e.g.,* gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that any designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be necessary for the conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the section 9 of the Act take prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat units may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the San Bernardino kangaroo rat, we used the best scientific and commercial data available. These data included research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; San Bernardino County Multiple Species Habitat Conservation Program (MSHCP) database; the University of California, Riverside, species database; and data from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, including results from on-going research on the San Bernardino kangaroo rat by the San Bernardino County Museum.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These physical and biological features, as outlined in 50 CFR 424.12, include but are not limited to: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species. All areas designated as critical habitat for the San Bernardino kangaroo rat contain one or more of these physical or biological features, also called primary constituent elements.

The primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, and/or sheltering. The primary constituent elements are found in areas influenced by historic and/or current geomorphological and hydrological processes and areas of wind-blown sand that support alluvial sage scrub vegetation or a mosaic of alluvial sage scrub and associated vegetation types (*e.g.,* coastal sage scrub, chaparral) in San Bernardino and Riverside counties. Primary constituent elements associated with the biological needs of dispersal are also found in areas that provide connectivity or linkage between or within larger core population areas, including open space and disturbed areas that may contain introduced plant species.

The long-term conservation of the San Bernardino kangaroo rat is dependent upon a number of factors including the protection and management of occupied habitat, the protection of linkages between core areas to maintain gene flow and minimize loss of genetic diversity (W. Spencer, conservation biologist, Conservation Biology Institute, pers. comm., 2002; Lande 1988), the protection of upland areas adjacent to suitable habitat that serve as refugia from lower portions of the floodplain during large scale flooding events and/or provide source populations for recolonization of the lower floodplain after the flooding has subsided (R. McKernan, pers. comm., 2002), and the protection of geomorphological, hydrological, and aeolian (wind-driven) processes essential to the continued existence and conservation of suitable habitat. The location and dynamic nature of the alluvial habitat occupied by this species makes it especially vulnerable to flood control activities throughout the drainages in which it occurs.

Based on our current knowledge of this species, the primary constituent elements include:

(1) Soil series consisting predominantly of sand, loamy sand, sandy loam, or loam;

(2) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral, with a moderately open canopy;

(3) River, creek, stream, and wash channels; alluvial fans; floodplains; floodplain benches and terraces; and historic braided channels that are subject to dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the San Bernardino kangaroo rat. These areas may include a mosaic of suitable and unsuitable soils and vegetation that either (a) occur at a scale smaller than the home range of the animal, or (b) form a series of core areas and linkages between them; and

(4) Upland areas proximal to floodplains with suitable habitat (*e.g.,* floodplains that support the soils, vegetation, or geomorphological, hydrological and aeolian processes essential to this species). These areas are essential due to their geographic proximity to suitable habitat and the functions they serve during flooding events. These areas may include

marginal habitats such as agricultural lands that are disced annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

Criteria Used To Identify Critical Habitat

In identifying areas essential to the conservation of the San Bernardino kangaroo rat, we used data regarding the habitat elements essential to the species, including vegetation types, hydrology, elevation, topography, and soil type and texture. We identified suitable and necessary habitat components within the species' current and historic range, and examined the degree of existing urbanization and other forms of anthropogenic habitat disturbance, excluding from the designation, as feasible, those areas in which development has permanently precluded occupation by the species.

To identify those lands essential to the conservation of the San Bernardino kangaroo rat, we used data regarding (1) known San Bernardino kangaroo rat occurrences, (2) alluvial fan sage scrub and associated vegetation, (3) geomorphology, and (4) connectivity corridors between San Bernardino kangaroo rat populations. We delimited a study area by selecting geographic boundaries based on the four factors described above. We determined conservation value based on the presence of, or proximity to, extant San Bernardino kangaroo rat populations and/or alluvial fan sage scrub and associated vegetation, surrounding land-uses, and the potential to allow dispersal of the species between occupied areas. We then evaluated within this area those areas where ongoing habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the San Bernardino kangaroo rat. These include the proposed Western Riverside County MSHCP and the proposed San Bernardino Valley-Wide MSHCP. Finally, we evaluated adjacent lands that may not have been included in the original data due to data limitations but have conservation value for the San Bernardino kangaroo rat based on the factors described above.

Once essential habitat was identified and delineated, we evaluated those lands to determine if they were covered by an approved Habitat Conservation Plan (HCP) or other special management plan that provided protection and management for the San Bernardino kangaroo rat and its habitat. We determined that none of the essential lands were covered by an approved HCP or other special management plan in which the San Bernardino kangaroo rat is a covered species.

Critical habitat for the San Bernardino kangaroo rat was delineated based on interpretation of the multiple sources available during the preparation of this final rule, including aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map), current (2001) digital ortho-photography, and projects authorized for take through consultations under section 7 of the Act. These lands were divided into specific map units, *i.e.,* critical habitat units.

In defining critical habitat boundaries, we made an effort to avoid development, such as urbanized areas (*e.g.*, cities) and similar lands that do not contain the primary constituent elements that defined lands essential for the conservation of the San Bernardino kangaroo rat. However, our minimum mapping unit did not allow us to exclude all developed areas. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The approximate area of critical habitat by county and land ownership is shown in Table 1. Critical habitat includes San Bernardino kangaroo rat habitat throughout the species' remaining range in Riverside and San Bernardino Counties, California. Lands designated are under private, State, Tribal, and Federal ownership, with Federal lands including lands managed by the U.S. Forest Service (Forest Service) and Bureau of Land Management (BLM). Four critical habitat units have been delineated: Santa Ana River; Lytle and Cajon Creeks; San Jacinto River-Bautista Creek; and Etiwanda Alluvial Fan and Wash. These areas support important concentrations of San Bernardino kangaroo rats and are the major strongholds of this species within its geographical range. In summary, the critical habitat areas described below constitute our best assessment of areas needed for the survival and conservation of the San Bernardino kangaroo rat. A brief description of each unit, and reasons for designating it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries[1]]

County	Federal[2]	Tribal	Local/State[3]	Private	Total
Riverside	135 ha (330 ac)	290 ha (710 ac)	0 ha (0 ac)	1,835 ha (4,530 ac)	2,260 ha (5,565 ac)
San Bernardino	800 ac (1,970 ac)	0 ha (0 ac)	215 ha (535 ac)	10,210 ha (25,220 ac)	11,225 ha (27,725 ac)
Total	935 ha (2,300 ac)	290 ha (710 ac)	215 ha (535 ac)	12,045 ha (29,750 ac)	13,485 ha (33,295 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, approximate hectares and acres have been rounded to the nearest 5.

[2] Federal lands include BLM and Forest Service lands.

[3] Local/State lands defined for San Bernardino County are those lands formerly owned by the U.S. Air Force as part of Norton Air Force Base. These lands are in the process of being acquired by the San Bernardino County International Airport Authority and the Inland Valley Development Agency.

Critical Habitat Unit 1: Santa Ana River

The Santa Ana River critical habitat unit, located in San Bernardino County, encompasses approximately 3,615 ha (8,935 ac), and includes the Santa Ana River and portions of City, Plunge, and Mill creeks. Bounded by Seven Oaks Dam to the northeast, the area includes lands within the San Bernardino National Forest and portions of the cities of San Bernardino, Redlands, Highland, and Colton. Although Seven Oaks Dam impedes sediment transport and reduces the magnitude, frequency, and extent of flood events, the system still retains partial fluvial dynamics because contributions from Mill Creek are not impeded by a dam or debris basin.

A large tract of undeveloped land in San Bernardino National Forest is partially within and adjacent to the northern and eastern portions of this critical habitat unit. In addition, this unit contains upland refugia and tributaries (*e.g.,* City and Plunge creeks) that are occupied by the species, active hydrological channels, floodplain terraces, and areas of habitat immediately adjacent to floodplain terraces.

The Santa Ana River unit contains the approximately 310 ha (765 ac) Woolly-Star Preservation Area (WSPA), a section of the floodplain downstream of Seven Oaks Dam that was preserved by the flood control districts of Orange, Riverside, and San Bernardino counties. The WSPA was established in 1988 by the Army Corps of Engineers (ACOE) in an attempt to minimize the effects of Seven Oaks Dam on the federally endangered *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly-star) along the Santa Ana River. This area of alluvial fan scrub in the wash near the low-flow channel of the river was designated for preservation because these sections of the wash were thought to have the highest potential to maintain the hydrology necessary for the periodic regeneration of early phases of alluvial fan sage scrub. Most of the area is likely to support San Bernardino kangaroo rats (MEC Analytical Systems, Inc 2000).

We are now coordinating with the BLM, ACOE, San Bernardino Valley Conservation District, Cemex Construction Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a conservation area consisting of alluvial fan scrub occupied by three federally endangered species, the San Bernardino kangaroo rat, Santa Ana River woolly-star, and *Dodecahema leptoceras* (slender-horned spineflower); and one federally threatened species, the coastal California gnatcatcher (*Polioptila californica californica*). The area is envisioned to include an Area of Critical Environmental Concern or ACEC (see below) and the ACOE's preservation lands for Santa Ana River woolly-star. This cooperative agreement would reconfigure and consolidate sand and gravel mining operations in this unit to reduce adverse effects to these listed species and remaining alluvial fan scrub communities.

In 1994, the BLM designated three parcels in the Santa Ana River, a total of approximately 305 ha (760 ac), as an ACEC. The primary goal of this designation was to protect and enhance the habitat of federally listed plant species occurring in the area while providing for the administration of existing water conservation rights. Although the establishment of this ACEC was important in regard to conservation of sensitive species and communities in this area, the administration of these valid existing water conservation rights may conflict with the BLM's ability to manage their lands for the San Bernardino kangaroo rat. Existing rights include a withdrawal of Federal lands for water conservation through an act of Congress on February 20, 1909 (Public, No. 248). The entire ACEC is included in this withdrawn land and may be used for water conservation measures such as the construction of percolation basins. These lands are not managed specifically for the San Bernardino kangaroo rat.

Additionally, approximately 30 ha (54 ac) of occupied habitat in the Santa Ana River has been set aside in perpetuity by the U.S. Air Force as part of on-base site remediation efforts at the former Norton Air Force Base in San Bernardino, California. The area will be monitored and managed specifically for the San Bernardino kangaroo rat, as well as the woolly-star.

Critical Habitat Unit 2: Lytle and Cajon Creeks

The Lytle and Cajon Creeks Unit, which encompasses approximately 5,655 ha (13,970 ac) in San Bernardino County, includes the northern extent of this species' remaining distribution. This unit contains habitat along and between Lytle and Cajon creeks from the point that the creeks emanate from canyons within San Bernardino National Forest to flood control channels downstream. This unit includes alluvial fans, floodplain terraces, and historic braided river channels. Alluvial sage scrub and other vegetation types that provide habitat for San Bernardino kangaroo rat occur on terraces and adjacent areas with sandy soils. This unit includes Glen Helen Regional Park and portions of the City of Muscoy.

The hydro-geomorphological processes that apparently rejuvenate and maintain the dynamic mosaic of alluvial fan sage scrub are still largely intact in Lytle and Cajon creeks (*i.e.,* stream flows are not impeded by dams or debris basins), and the remaining habitat allows dispersal between these two drainages, which is important for genetic exchange between populations. This unit is adjacent to large tracts of undeveloped land and contains upland areas occupied by the species. Therefore, these areas are essential because of the presence of substantial, existing populations of the species and habitat connectivity within and between Lytle and Cajon Creeks, as well as with the Etiwanda alluvial fan to the west.

The approximately 560 ha (1,380 ac) Cajon Creek Habitat Conservation Management Area, managed by Vulcan Materials Co., Western Division, was created in 1996 to offset approximately 920 ha (2,270 ac) of sand and gravel mining proposed within and adjacent to Cajon Creek. Of this, an estimated 245 ha (610 ac) is the Cajon Creek Conservation Bank established to help conserve populations of 24 species associated with alluvial fan scrub, including the Santa Ana River woolly-star, San Bernardino kangaroo rat, and coastal California gnatcatcher. We are working, through the section 7 consultation process, with project proponents to encourage the purchase of lands within this conservation bank by the year 2006, when interim protection under a 10-year conservation easement ends. The entire Cajon Creek Habitat Conservation Management Area and adjacent mitigation lands set aside for the development of the County of San Bernardino Sheriff's training facility would form the nucleus for a larger reserve to protect the San Bernardino kangaroo rat and other listed species in this area.

Critical Habitat Unit 3: San Jacinto River-Bautista Creek

The San Jacinto River-Bautista Creek Unit encompasses approximately 2,260 ha (5,565 ac) in Riverside County and includes portions of San Bernardino National Forest, Soboba Band of Luiseno Indians Reservation, Bautista Creek, and areas along the San Jacinto River in the vicinity of San Jacinto, Hemet, and Valle Vista. This unit, which represents the southern extent of the currently known distribution of the

species, is adjacent to San Bernardino National Forest and includes occupied habitat and approximately 330 ha (815 ac) of lands not currently known to be occupied.

Along the San Jacinto River the species occurs from the upper reach of habitat in the River downstream to State Route 79, within the confined portion of the floodplain, beyond the earthen flood control levee, along the river into the San Jacinto Valley and foothills of the Badlands. In Bautista Creek, the species occurs upstream of the Bautista flood control basin until the topography of the canyon becomes too steep. On Tribal lands two occupied tributaries to the San Jacinto River are included. All non-Tribal lands within Riverside County designated as critical habitat for the San Bernardino kangaroo rat are within the planning area of the Western Riverside MSHCP.

Since the time of listing, additional areas along the San Jacinto River and Bautista Creek have been identified as essential for the conservation of the San Bernardino kangaroo rat. New essential areas were identified based on additional occupation information, a better understanding of the species' habitat needs and vegetation providing habitat, the need for habitat connectivity, and the importance of maintenance of hydrological conditions. New information indicates that the habitat occupied within the floodplain by the San Bernardino kangaroo rat is larger than previously thought (McKernan, *in litt.* 1999, Braden and McKernan 2000), and includes areas of higher vegetation density. We have also received additional information on the distribution of the species within the watershed (*e.g.,* Bautista Creek), and are including areas essential for maintaining habitat connectivity along the floodplain. This additional information further supports the identification of this area as a major concentration of San Bernardino kangaroo rat in the final listing rule and the importance of this area for the long-term conservation for this species.

Approximately 290 ha (710 ac) of lands within the Soboba Band of Luiseno Indians Reservation within this critical habitat unit have been determined to be essential to the conservation of the San Bernardino kangaroo rat and designated as critical habitat. These lands include portions of the San Jacinto River and two tributary washes. This portion of the unit is least affected by flood control activities and supports the largest known density of animals in the unit. Inclusion of the Tribal portion of the unit is also necessary to maintain the hydrologic functions of the unit. Please refer to the Government-to Government Relationship with Tribes section of this final rule for a more detailed explanation of why these Tribal lands have been included in this final designation.

The San Jacinto River/Bautista Canyon population is the only known remaining population in Riverside County. Although this population is the smallest of the three large remaining populations, it is essential for the long-term survival and recovery of the species. The other two large populations (Santa Ana River and Lytle Creek/Cajon Wash) are in relatively close proximity to one another, leaving them simultaneously vulnerable to regional catastrophes. As a result, the San Jacinto population is essential for the recovery of the species, and any permanent reduction in its viability would affect the long-term survival of the San Bernardino kangaroo rat.

The portion of designated critical habitat located downstream (west) of State Route 79, an estimated 330 ha (815 ac), is currently not known to be occupied by the San Bernardino kangaroo rat. This area was historically occupied but we are not aware of any recent trapping efforts that could provide additional information as to current status of occupancy. This portion of the unit provides additional habitat essential for recovery to maintain a viable population and by reducing the risks from deleterious stochastic (random naturally occurring) events within the unit.

The population of San Bernardino kangaroo rats in this unit is at risk due to its small size and the limited area that it occupies. As discussed above, low abundance renders the population susceptible to stochastic events such as inbreeding, the loss of genetic variation, demographic problems like skewed variability in age and sex ratios, and catastrophes such as floods, droughts, or disease epidemics (Lande 1988, Frankham and Ralls 1998, Saccheri *et al.* 1998).

The risks of catastrophic stochastic events due to small population size and isolation is exacerbated by normal population fluctuation cycles. During a severe population decline due to a natural fluctuation or a stochastic event, populations contract into disjunct groups. As populations rebound these groups become the source for recolonization of previously occupied and new areas. Areas that include varying habitat conditions (*e.g.,* topography, position on the floodplain, vegetation characteristics, substrate, areas for population expansion) have an increased ability to support populations through stochastic events. Population expansion in good years results in reservoirs of individuals that survive in more difficult years. Therefore, essential habitat areas supporting relatively small populations should include varying habitat conditions.

The area of this unit that is not known to be occupied is on the broadest portion of the historic floodplain and is contiguous to known occupied habitat. It will provide area for population expansion during expansion years and provides important habitat variability for persistence in years of decline.

Critical Habitat Unit 4: Etiwanda Alluvial Fan and Wash

The Etiwanda Alluvial Fan and Wash, which encompasses approximately 1,950 ha (4,820 ac), is located in western San Bernardino County and represents the approximate westernmost extent of the known range of the San Bernardino kangaroo rat. Within the northern boundary of the unit are portions of San Bernardino National Forest. This unit includes lands within and between the active hydrological channels of Deer, Day, and Etiwanda creeks. A large alluvial fan, floodplains, and terraces occur throughout the unit. Soils are primarily sandy or sandy loam and support alluvial fan sage scrub. This unit also includes portions within the boundaries of the cities of Rancho Cucamonga and Fontana; and the approximately 310 ha (760 ac) North Etiwanda Preserve.

Lands designated as critical habitat within this unit contain a population of the species and upland refugia from catastrophic flooding. Neither dams nor debris basins exist at the mouths of East Etiwanda and San Sevaine creeks, enabling natural fluvial processes to maintain favorable habitat conditions on the upper alluvial fan and in other portions of the critical habitat unit. However, urban development and existing and proposed flood control structures will preclude the occurrence of future natural fluvial processes in the Etiwanda alluvial fan south of 24th Street/Wilson Avenue (Biological Opinion, FWS–SB–1743.5 Carlsbad Fish and Wildlife Office, February 7, 2002). Despite these conditions, the San Bernardino kangaroo rat persists within San Bernardino County Transportation and Flood Control District property and approximately 65 ha (155 ac) of this habitat within the critical habitat unit has been set aside and will be managed primarily for the San Bernardino kangaroo rat. Recognized local San Bernardino kangaroo rat authority, Robert McKernan, states that areas

within historic flood regimes (such as western Lytle Creek fan including the Etiwanda wash) should be given equal priority to the major population areas of the Santa Ana River and Cajon Wash in considering the survival and recovery of the San Bernardino kangaroo rat (R. McKernan 1999).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal action agency. Formal conference reports include a biological opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the San Bernardino kangaroo rat or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the consultation process pursuant to section 7 of the Act. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require consultation under section 7 of the Act.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Bernardino kangaroo rat is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Any activity that results in changes in the hydrology of the unit, including activities associated with flood control structures and operations; construction of levees, berms, and concrete channels; flooding; sediment, sand, or gravel removal, transfer, or deposition; grading; excavation; and construction or modification of bridges;

(2) Any activity that results in development or alteration of the landscape within or immediately adjacent to fluvial systems, including water diversion, reclamation, and recharge activities; agricultural activities; urban and industrial development; water conservation activities; off-road activity; and mechanized land clearing or discing;

(3) Any activity that results in changes to the water quality or quantity to an extent that habitat becomes unsuitable to support the San Bernardino kangaroo rat;

(4) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species, urban-associated domestic animals (*e.g.,* cats), or livestock into San Bernardino kangaroo rat habitat;

(5) Any activity that results in appreciable detrimental changes to the density or diversity of plant or animal populations in San Bernardino kangaroo rat habitat, such as grubbing, grading, overgrazing, mining, discing, off-road vehicle use, or the application of herbicides, rodenticides, or other pesticides; and

(6) Any activity that could result in an appreciably decreased habitat value or quality through indirect effects, such as noise, edge effects, night-time lighting, or fragmentation.

To properly portray the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that

may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the San Bernardino kangaroo rat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. In that portion of critical habitat that is not currently known to be occupied or if occupied habitat becomes unoccupied in the future, critical habitat may provide a benefit through the recognition of the importance of these areas to the conservation of the species. However, the Corps already currently requires review of most or all projects requiring permits in all fluvial systems, whether San Bernardino kangaroo rats are known to be present.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult pursuant to section 7 of the Act with the Service on activities in areas known to be occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the U.S. by the Corps under section 404 of the Clean Water Act;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(3) Regulation of airport construction and improvement activities by the Federal Aviation Administration;

(4) Licensing of construction of communication sites by the Federal Communications Commission; and

(5) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U. S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. The Act defines incidental take as take that is ''incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.'' A habitat conservation plan, or HCP, must accompany an application for an incidental take permit. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

The State of California instituted a conservation planning program parallel to the Federal HCP program. Under the Natural Community Conservation Planning (NCCP) Act of 1991, a NCCP is a plan for the conservation of natural communities that takes an ecosystem approach and encourages cooperation between private and government interests. The Service and the California Department of Fish and Game (CDFG) work with applicants to develop plans that serve both as an HCP under the Federal Endangered Species Act as well as an NCCP under the State's NCCP Act. Much like a regional HCP, an NCCP identifies and provides for the regional or area-wide protection and perpetuation of plants, animals, and their habitats, while allowing compatible land use and economic activity. The initial focus of this program is coastal sage scrub. Within this program, the CDFG included the long-term conservation of alluvial sage scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (memoranda of understanding (MOUs)) to develop multi-species plans that meet NCCP criteria, but have not enrolled in the NCCP program in the interim.

We are coordinating with the BLM, Corps, San Bernardino Valley Conservation District, Sun West Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a conservation area consisting of alluvial fan scrub communities occupied by four federally listed species, but as yet, we have not completed this process.

Because there are no approved HCPs/NCCPs in which the San Bernardino kangaroo rat is a covered species or other conservation plans that are currently completed that specifically address the San Bernardino kangaroo rat, we did not exclude any lands from this critical habitat designation pursuant to section 4(b)(2) of the Act on this basis.

In the event that future HCPs covering the San Bernardino kangaroo rat are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the San Bernardino kangaroo rat by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the San Bernardino kangaroo rat. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify appropriate management for lands essential for the long-term conservation of the San Bernardino kangaroo rat. The take minimization and compensation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the San Bernardino kangaroo rat as a covered species is ultimately approved, the Service may reassess the

critical habitat boundaries in light of the HCP.

Summary of Comments and Recommendations

In the December 8, 2000, proposed critical habitat designation (65 FR 77178), we requested all interested parties to submit comments on the specifics of the proposal including information related to biological justification, policy, economics, and proposed critical habitat boundaries. The first comment period closed on February 6, 2001. The comment period was reopened from September 4, 2001, to October 4, 2001 (66 FR 46251), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat. Comments received after the close of this last comment period were determined not to provide substantive comment that had not already been raised or addressed and entered into the supportive record for this rulemaking.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of legal notices in two newspapers in southern California: San Bernardino County Sun and Riverside Press Enterprise on December 11, 2000, and again in both papers on September 4, 2001. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our Carlsbad Fish and Wildlife Office Internet site following its release on September 4, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis on the proposed designation, the latter notices announced the dates and times of public hearings on the proposed designation. These hearings were held on September 20, 2001, in San Bernardino, California from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We asked nine biologists, who have knowledge of the San Bernardino kangaroo rat, to provide peer review of the proposed designation of critical habitat for the San Bernardino kangaroo rat; six responded. Five of the six supported the designation, although several expressed concerns with the ability of the amount of habitat proposed to provide for the persistence and recovery of the species; one was non-committal. Several of the reviewers felt that the Braden and McKernan (2000) study could be misleading, as their methods for quantifying the percent cover of habitat could give the impression that marginal upland mature shrub habitat had the same value as high quality alluvial scrub. Their comments have been either addressed in the text or responded to below.

We received a total of 66 comment letters/testimonies, from 54 separate parties, during the two public comment periods. Comments were received from a number of Federal and local agencies, and separate private organizations or individuals. Of these 66 comments, 10 were in favor of the designation, 52 against it, and 4 were neutral. We reviewed all comments received for substantive issues and comments, and new information regarding the San Bernardino kangaroo rat. Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. Comments have been incorporated directly into the final rule or final addendum to the economic analysis or addressed in the following summary.

Issue 1: Biological Justification and Methodology

1. *Comment:* The scale of the proposed critical habitat for the San Bernardino kangaroo rat is overly broad, resulting in vague unit boundaries. Several commenters questioned the biological justification for proposing critical habitat for the San Bernardino kangaroo rat using such a landscape-scale approach. Several commenters were concerned that the mapping lacked precision for use by the public. Several commenters voiced concern that areas that should not be designated as critical habitat were included because of the mapping scale.

Our Response: We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the San Bernardino kangaroo rat. Due to time constraints, and the absence of more detailed map information during the preparation of the proposed designation, we used a 100-m UTM grid to delineate the critical habitat boundaries. This resulted in the inclusion of some lands that did not provide the primary constituent elements for the San Bernardino kangaroo rat, such as homes and urban landscapes.

In developing the final designation, we made an effort to minimize the inclusion of nonessential areas that do not contain the primary constituent elements for the kangaroo rat. However, due to our mapping scale, some areas not essential to the conservation of the San Bernardino kangaroo rat were included within the boundaries of proposed and final critical habitat. We were able to refine our boundaries considerably with recent (2001) aerial imagery which allowed for the exclusion of many areas that do not contain the primary constituent elements. These areas, such as towns, housing developments, mines, or other developed lands are unlikely to provide essential habitat for the kangaroo rat. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they affect the species or the primary constituent elements of adjacent critical habitat.

2. *Comment:* Several peer reviewers, in addition to other commenters, had concerns that the amount of land proposed as critical habitat was not sufficient for the survival and long-term conservation of the species. Additionally, some commenters thought that the critical habitat proposal was overly broad, containing too much land, and one commenter supported the delineation of the proposed designation.

Our Response: In proposing critical habitat for the San Bernardino kangaroo rat, we identified those areas that we believed to be essential to the conservation of this species. However, the mapping scale that we used resulted in a more inclusive proposal. We did not include all areas currently occupied by the kangaroo rat, but designated those areas that possess larger populations, have unique ecological characteristics, and/or represent the historic geographic areas where the species can be re-established. Please refer to the Background and Criteria Used To Identify Critical Habitat sections of this final rule for further discussion on this topic.

After refining our proposal and weighing the best available information, we conclude that the areas designated by this final rule, including currently occupied areas that were not known to be occupied at the time the species was listed, are essential for the conservation of the species.

3. *Comment:* Several peer reviewers and other commenters indicated that certain areas within the proposed critical habitat were either known to be occupied (*e.g.,* Etiwanda Creek Channel, Day Creek Channel, San Antonio Wash

near Baseline Road, Etiwanda Fan) or were not occupied (*e.g.,* Riverside County Flood Control and Water Conservation District facilities, Rancho Cucamonga, Fontana).

Our Response: Data used in the preparation of our proposed and final designations indicate that the Etiwanda Creek Channel, Day Creek Channel, San Antonio Wash near Baseline Road, Etiwanda Fan, and areas in Fontana are occupied by the San Bernardino kangaroo rat. The majority of the Riverside Flood Control and Water Conservation District facilities mentioned by the commenters (*e.g.,* small properties, buildings, wells) are located in areas of the San Jacinto Wash in which we have current documentation of occupancy by the San Bernardino kangaroo rat.

4. *Comment:* Some commenters were concerned with the definition of ''occupied'' in the proposed rule claiming that it was problematic, unsupportable, and inconsistent.

Our Response: In the proposed rule and for this final designation, we defined occupancy based on documented occurrence data for the San Bernardino kangaroo rat for the last fifteen years. We evaluated the location of observations relative to other documented occurrences to obtain an understanding of the mosaic of occupied habitat within appropriate suitable plant communities and wash habitat. We then evaluated the estimated territory size, potential use area and dispersal distances documented for other kangaroo rat species and applied those trends for the San Bernardino kangaroo rat.

We understand that this definition of occupancy may differ from public perception of detectable presence of a kangaroo rat during each survey event over all of designated critical habitat. We believe that based on the behavior and ecology of the San Bernardino kangaroo rat as extrapolated from the best available scientific data, the animal may not be detectable at all times across all areas designated as critical habitat. Based on our analysis we believe we have properly defined occupancy as it relates to the behavior and ecology of the San Bernardino kangaroo rat.

5. *Comment:* Several peer reviewers pointed out that small, isolated populations of the San Bernardino kangaroo rat may contain important genetic material for the species. They also suggested that the Service conduct a population genetics study to determine whether or not to include them in critical habitat.

Our Response: Small isolated populations of the San Bernardino kangaroo rat may provide important genetic material for the species and its long-term conservation. However, we currently do not have any information concerning the genetic diversity of these populations. Further, due to the time constraints for completing this designation, we were unable to develop and or conduct a biologically and statistically rigorous study to evaluate the genetics of the remaining San Bernardino kangaroo rat populations. Therefore, we did not have substantive information to determine and support that these small isolated populations are essential to the long-term conservation of the San Bernardino kangaroo rat. Thus, the areas containing them were not designated as critical habitat.

6. *Comment:* The descriptions of the primary constituent elements of critical habitat for the San Bernardino kangaroo rat are not specific, or are vague, incorrect, and/or confusing.

Our Response: The description of the primary constituent elements for the San Bernardino kangaroo rat is based on the best available scientific and commercial data regarding the species, including a compilation of data from peer-reviewed, published literature; unpublished or non-peer-reviewed survey and research reports; and opinions of biologists knowledgeable about the San Bernardino kangaroo rat and its habitat. Additionally, we updated the biological information, including the primary constituent elements, in this final rule based on information that we received from survey reports during 2002, public comments, and scientific and commercial data. Consequently, the primary constituent elements, as described in this final rule, represent our best estimate of what habitat components are essential for the conservation of the species. Please refer to the Primary Constituent Elements section of this final rule for a further discussion on this topic.

7. *Comment:* One commenter questioned the methodology that we used to determine the critical habitat boundaries and indicated that the proposed designation must be substantially revised and resubmitted for public comments before it is finalized

Our Response: As described in the Criteria Used To Identify Critical Habitat section of this final rule we describe the methods used to define critical habitat for the San Bernardino kangaroo rat. In general, to delineate critical habitat boundaries we used data regarding (1) known San Bernardino kangaroo rat occurrences, (2) alluvial fan sage scrub and associated vegetation, (3) geomorphology, and (4) connectivity corridors between San Bernardino kangaroo rat population. Once these areas were defined, we then evaluated them for conservation value and removed any lands determined not to be essential to the long-term conservation of the San Bernardino kangaroo rat (*e.g.,* urban, active mining, and agriculture).

During the development of this final designation, the lands proposed for designation were further re-evaluated and refined based on more recent aerial photography, public comment, and information received since the publication of the proposed designation. The critical habitat boundaries defined in this final rule have been reduced from those identified in the proposal.

8. *Comment:* Several peer reviewers and one commenter expressed concern with the use of the data from Braden and McKernan (2000) to include upland areas such as vineyards (current/historical), agricultural lands, and mature alluvial fan sage scrub in the proposed critical habitat.

Our Response: The Braden and McKernan (2000) study provided additional new, specific data about the habitat characteristics where the species has been documented; we realize that this study indicates the range of habitat characteristics in which the species can occur. We recognize that the study was not designed to indicate/describe habitat affinities or habitat preferences by the San Bernardino kangaroo rat. We used this information, realizing its limitations, when developing our best estimate of areas that are important for the conservation of the San Bernardino kangaroo rat. Please refer to the background section in this final rule for an expanded discussion on this topic.

9. *Comment:* Several peer reviewers were concerned that the survey protocol was insufficient to determine presence/absence; therefore, data used to determine the proposed critical habitat was flawed. Additionally, one commenter was concerned that the Service assumed that many areas were occupied without protocol surveys.

Our Response: We currently do not have an approved survey protocol for the San Bernardino kangaroo rat. However, based on repeated field sampling, we have developed a standard minimum methodology for conducting presence/absence surveys. We are currently reviewing proposed changes to increase the accuracy of this survey methodology and decrease the chances of error in detecting the San Bernardino kangaroo rat if present.

For determining critical habitat, we evaluated the current distribution of the

San Bernardino kangaroo rat based on documented sightings or captures and incorporated those areas that we believed to be essential to the conservation of the species based on this occurrence information in the critical habitat designation.

10. *Comment:* The proposed rule inappropriately uses a ''recovery standard'' to determine critical habitat for the San Bernardino kangaroo rat.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes ''(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' The term ''conservation'', as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.''

In designating critical habitat for the San Bernardino kangaroo rat, pursuant to the Act, we identified those areas that currently contain one or more of the physical or biological features, primary constituent elements, essential to the conservation of the species. We did not include all areas currently occupied by the San Bernardino kangaroo rat or containing the primary constituent elements, but designated only those areas determined to be essential to the species conservation and characterized by large populations, unique ecological characteristics, and historic geographic areas where the species can be re-established.

11. *Comment:* The lands that are being proposed as critical habitat for the San Bernardino kangaroo rat represent a huge, unsubstantiated increase from the amount of habitat that was described in the final listing rule, and even now, as being occupied by this species. There is a lack of data to support this increase in occupied area for the species.

Our Response: In our final rule to list the San Bernardino kangaroo rat as endangered (63 FR 51005), we estimated that approximately 5,279 ha (13,044 ac) were likely occupied. In this final critical habitat designation we are designating approximately 13,485 ha (33,295 ac) as essential, of which approximately 330 ha (815 ac) are currently not known to be occupied. The approximate two-fold increase over the approximate amount of land occupied by the San Bernardino kangaroo rat at the time it was federally listed is based on additional data and research that has expanded our knowledge on the distribution and habitat needs of the species. Please refer to the background section of this final rule for a more detailed discussion of this issue.

12. *Comment:* The broad scale of the proposed critical habitat maps is not specific enough to allow for reasonable public comment, therefore violating the Act and 50 CFR 424.12(c).

Our Response: We identified specific areas in the proposed determination that are referenced by public land surveys and UTM coordinates, which are found on standard topographic maps. We also made available a public viewing room where maps with the proposed critical habitat superimposed on 7.5 minute topographic maps and spot imagery could be inspected. Further, we distributed GIS coverages and maps of the proposed critical habitat to everyone who requested them. We believe the information made available to the public was sufficiently detailed to allow for informed public comment. This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). The accompanying maps are for illustration purposes only. If additional clarification is necessary, please contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

13. *Comment:* According to one peer reviewer, geomorphological and hydrological processes, and presently unoccupied habitat are critical to the survival and conservation of the San Bernardino kangaroo rat. The commenter recommended including side channels in the critical habitat designation.

Our Response: As we discuss in the Background section of this rule, we concur with the commenter on the importance of these geomorphological and hydrological processes for creating and maintaining habitat essential to the survival and conservation of the San Bernardino kangaroo rat. We considered the importance of these processes and side channels when delineating the boundaries of critical habitat for this final designation and included the areas providing for those geomorphological and hydrological processes that are essential for the conservation of the San Bernardino kangaroo rat.

14. *Comment:* Several commenters felt that we proposed critical habitat before we obtained all of ''the best scientific evidence'; that we should conduct additional surveys or research (such as estimate the minimum viable population size); and that there is evidence to designate critical habitat areas outside of occupied habitat.

Our Response: We are required to use the best available information in designating critical habitat. During the development of the proposed designation and following its publication during the two open comment periods, we solicited biological data and public participation in the rule making process. These comments have been taken into consideration in the development of this final designation. As stated in several sections of this final designation, we used data collected during 2001 and 2002 to determine the final configuration of critical habitat. Data from 2002 corroborated occupancy and assisted in further defining critical habitat boundaries. We are currently unable to conduct a population viability analysis for or more detailed research on the San Bernardino kangaroo rat due to time and funding constraints. We are currently required under a court-approved settlement agreement to finalize this designation by April 15, 2002. However, we will continue to monitor the species and collect new information and may revise the critical habitat designation in the future, funding permitting, if new information supports a change.

Issue 2: Policy and Regulations

15. *Comment:* The Service violated the Administrative Procedure Act by not providing adequate public notice to all affected landowners, not providing sufficient opportunity for public comment, or extending the comment period to allow for adequate time for comment.

Our Response: We published the proposed rule to designate critical habitat for the San Bernardino kangaroo rat on December 8, 2000 (65 FR 77178), and accepted comments from the public for 60 days, until February 6, 2001. The comment period was reopened from September 4, 2001, to October 4, 2001 (66 FR 46251), to allow for additional comments on the proposed designation, and comments on the draft economic analysis on the proposed critical habitat. Comments received after the close of the last comment period were determined not to provide substantive comments that had not already been raised or addressed and entered into the supportive record for this rulemaking.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other

interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: San Bernardino Sun and Riverside Press Enterprise on December 11, 2000, and again in both papers on September 4, 2001. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our Carlsbad Fish and Wildlife Office Internet site following the draft's release on September 4, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis for the proposed designation, the latter notices announced the dates and times of public hearings on the proposed designation. These hearings were held on September 20, 2001, in San Bernardino, California from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

16. *Comment:* A commenter indicated that our re-evaluation of the prudency of designating critical habitat for the San Bernardino kangaroo rat was insufficient.

Our Response: In our final rule listing the San Bernardino kangaroo rat as endangered under the Act (63 FR 51005), we found that designation of critical habitat was not prudent because we believed that designation could result in an increase in the degree of threat to the species. As we discuss in the Previous Federal Action section of this final rule, we were challenged on our original ''not prudent'' finding. On November 3, 1999, we agreed to a stipulated settlement that required us to publish a proposal to withdraw the existing ''not prudent'' critical habitat determination and re-evaluate the prudency of designating critical habitat. If designation of critical habitat for the San Bernardino kangaroo rat was determined to be prudent, we agreed to publish a proposed designation by December 1, 2000, and a final designation by December 1, 2001. The publication of our December 8, 2000, proposal and this final rule are in compliance with the stipulated settlement agreement and subsequent court orders. A detailed discussion of our re-evaluation of the prudency of designating critical habitat for the San Bernardino kangaroo rat is located in the Previous Federal Action section of the proposed designation. In short, our re-evaluation of the prudency of designating critical habitat resulted in our concluding that the benefits of designating critical habitat outweighed the benefits of not designating (*i.e.,* threats to the species due to the release of specific habitat or occurrence information). Pursuant to section 3 of the Act, and the implementing regulations, in the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat being designated, then a prudent finding is warranted.

17. *Comment:* The Service violated the National Environmental Policy Act of 1969 (NEPA) by failing to prepare an Environmental Impact Statement for the designation of critical habitat.

Our Response: As discussed in the National Environmental Policy Act section of the proposed rule and this final, we have determined that it is not necessary to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

18. *Comment:* Tribal lands should be excluded from critical habitat based on either section 4(b)(2) of the Act, Secretarial Order 3206, or because Tribal lands are managed better voluntarily.

Our Response: In our proposed critical habitat rule, we indicated that approximately 465 ha (1,150 ac) of lands within the Soboba Band of Luisẽno Indians Reservation in western Riverside County were essential for the conservation of the San Bernardino kangaroo rat. In the development of the final critical habitat designation for the San Bernardino kangaroo rat, we re-evaluated these Tribal lands to determine if they were essential to the conservation of the kangaroo rat and whether they should be designated as critical habitat. Based on distribution information for the San Bernardino kangaroo rat in the San Jacinto Wash, the continuity of kangaroo rat habitat extending up the tributaries adjacent to occupied habitat, and slope, vegetation, and disturbance information; we have re-defined the area designated as critical habitat on the Soboba Band of Luisẽno Indians Reservation. Additionally, we refined the 100 meter grid line used in the proposal to the essential critical habitat line along the edges of the two washes and the main portion of the river on Tribal land and removed from the designation a non-essential disturbed area on the western edge of Tribal lands on the north side of the river that is proposed for economic development. The result of this analysis and refinement was the reduction of critical habitat on Tribal land to 290 ha (710 ac).

Currently the Soboba Band of Luisẽno Indians does not have a resource management plan which provides protection or conservation for the San Bernardino kangaroo rat and its habitat. We are committed to maintaining a positive working relationship with the Tribe and will continue to work with them on developing a resource management plan for the Reservation including conservation measures for the kangaroo rat. However, due to the time constraints for completing this final rule and the lack of an existing resource management plan covering the San Bernardino kangaroo rat, we were required to finalize the designation based on our analysis of the relative importance of the lands within the Soboba Band of Luisẽno Indians Reservation for the conservation of the San Bernardino kangaroo rat.

For a further discussion of this issue please refer to the Government-To-Government Relationship With Tribes section of this final rule.

19. *Comment:* Many commenters, including all of the peer reviewers, suggested that additional lands be designated as critical habitat for the San Bernardino kangaroo rat. The areas suggested include additional lands upwind and upstream from lands contained within proposed critical habitat that are important to maintain San Bernardino kangaroo rat habitat, upland refugia areas up to 600 meters (1,950 feet) from channels, other known occupied sites, and other lands to connect the proposed critical habitat units together. The commenters indicated that these areas are needed for the long-term conservation of the San Bernardino kangaroo rat.

Our Response: We did not include all of the lands, both general and specific, suggested by the commenters in proposed critical habitat because, at the time of proposal, we concluded that these lands were not essential for the conservation of the San Bernardino kangaroo rat based on available information concerning status of the species in the specific areas and level of habitat disturbance and fragmentation. Only those lands that we believed to be essential to the conservation of the San Bernardino kangaroo rat based on the best scientific and commercial data available at the time the proposal was being developed were included in the proposed critical habitat designation.

20. *Comment:* Several commenters expressed concern over the inclusion of the former Norton Air Force Base in final critical habitat.

Our Response: Portions of the lands within the former Norton Air Force Base (NAFB) were included in the proposed designation of critical habitat for the San Bernardino kangaroo rat. Currently, NAFB is in the process of being turned over to the San Bernardino County Airport Authority and the Inland Valley Development Agency for use as a regional airport. During the development of the final designation, we re-evaluated those lands proposed as critical habitat that fell within the NAFB. Based on this re-evaluation and refinement, most of the land within the former NAFB was not included in this final critical habitat because it was determined not to be essential to the conservation of the San Bernardino kangaroo rat. All areas north of (and including) the runway have been removed from the final critical habitat designation because additional evaluation showed the area to be too highly degraded and fragmented to provide for conservation of the San Bernardino kangaroo rat. Areas south of the runway, adjacent to or in the Santa Ana River channel, are still considered essential to the conservation of the San Bernardino kangaroo rat because these support suitable habitat and existing populations.

Further, we completed an informal consultation with the Federal Aviation Authority regarding two grants, a $7 million grant to construct a Joint Powers Authority training facility and another grant between $5 and $20 million to rehabilitate the main runway. In our consultations on these two grants, following the proposal of critical habitat for the San Bernardino kangaroo rat, we determined that the construction of the JPA facility and the rehabilitation of the main runway will not adversely affect proposed critical habitat. The primary areas affected by these projects have been removed from designated critical habitat because they were determined to not be essential to the long-term conservation of the San Bernardino kangaroo rat due to the degraded condition of the area.

Commenters were additionally concerned that the designation of critical habitat for the San Bernardino kangaroo rat would affect a $1.3 million grant that the San Bernardino International Airport Authority was applying for to construct a hanger. A consultation with us pursuant to section 7 of the Act was not necessary because the proposed action did not affect any San Bernardino kangaroo rats or their habitat and was not within proposed critical habitat. The grant has since been awarded to the airport authority.

21. *Comment:* Emergency maintenance activities for the County of San Bernardino and the San Bernardino County Flood Control District should be exempted from designation within critical habitat.

Our Response: Emergency maintenance activities are not exempt from consultation under section 7 of the Act. The regulations at 50 CFR 402.05 allow for informal consultation where emergency circumstances mandate the need to consult in an expedited manner. Formal consultation should be initiated as soon as possible after the emergency is under control. We have conducted programmatic consultations with FEMA and other Federal agencies for future anticipated emergency actions. These consultations can be conducted prior to the emergency and address anticipated response activities. In addition, there is a Memorandum of Understanding (MOU) between the Service and FEMA which involves expedited consultation time frames.

22. *Comment:* Several commenters expressed concern regarding the inclusion of water and flood control district properties and facilities (e.g., Riverside County Flood Control and Water Conservation District, Metropolitan Water District of Southern California, City of Redlands) in the proposed critical habitat areas.

Our Response: Lands proposed and designated in this final rule have been determined to be essential to the conservation of the San Bernardino kangaroo rat by providing biological and physical requisites for the animals survival and long-term conservation. In developing our designation we attempted to exclude those areas that do not currently contain the primary constituent elements essential to the San Bernardino kangaroo rat, such as urban areas and land altered by active agriculture or mining. However, due to our minimum mapping scale and based on the photographic accuracy of our GIS data, some areas not containing the primary constituent elements essential to the San Bernardino kangaroo rat were included in designated critical habitat. Activities in which there is a Federal nexus that occur in these areas would not trigger a consultation pursuant to section 7 of the Act unless those activities may affect a listed species or may directly or indirectly affect primary constituent elements in adjacent critical habitat.

23. *Comment:* A number of commenters identified specific areas that they thought should not be designated as critical habitat (*e.g.,* Etiwanda and San Sevine Channel south of State Route 30; all of Units 4, 5, and 6; various project development areas).

Our Response: Where site-specific documentation was submitted to us providing a rationale and supporting documentation as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act and made a determination as to whether modifications to the proposal were appropriate. As discussed in the background sections of the proposed rule and this final rule, areas containing smaller populations of the San Bernardino kangaroo rat were removed from critical habitat in this final designation because they were determined not to be essential to the long-term conservation of the San Bernardino kangaroo rat. The basis for this determination and removing them from the final designation was based on the information indicating that the small scattered populations or habitats occurred in areas that were highly fragmented by urban and agricultural development or no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial sage scrub vegetation. Lands proposed as critical habitat that were excluded from this final designation based on this re-evaluation included portions of Etiwanda and San Sevine channels within Unit 4, and Units 5 and 6 in their entirety.

24. *Comment:* Critical habitat should be retained within the boundaries of approved HCPs. HCPs cannot be viewed as a functional substitute for critical habitat designation, and they provide inadequate protection and special management considerations for the species and their habitat. Other commenters supported the exclusion of approved HCPs from critical habitat designation, and several commenters wanted pending HCPs to be excluded, as well. They supported their recommendations by asserting that landowners will be reluctant to participate in HCPs unless they have incentives, including the removal of critical habitat from HCP boundaries.

Our Response: The designation of critical habitat should not deter participation in the Natural Community Conservation Program (NCCP) or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of

the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. Currently, there are no approved and legally operative HCPs in which the San Bernardino kangaroo rat is a covered species and management is provided for the species' long-term conservation.

25. *Comment:* The Service violated the Administrative Procedure Act and Endangered Species Act by not making the scientific data relied on in formulating the proposed rule available for public review and comment despite requests from interested parties and that we should also inform the public of areas that are occupied that we did not propose as critical habitat.

Our Response: In the proposed rule, we stated that all supporting documentation, including the references and unpublished data used in the preparation of the proposed rule, would be available for public inspection at the Carlsbad Fish and Wildlife Office. A public viewing room was made available at the Carlsbad Fish and Wildlife Office where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. In addition, we responded to each request for GIS maps and data supporting the rulemaking in a timely manner by providing copies of the maps and data. Additionally, data concerning the occurrences of the San Bernardino kangaroo rat used in the analysis for the proposed designation were also made available to the public, if requested. These data have also been provided to several of the local jurisdictions in western Riverside and San Bernardino counties for use in the development of the regional HCPs. The occurrence data and supporting documentation used in the rulemaking are available for inspection at the Carlsbad Fish and Wildlife Office by appointment (Please see **ADDRESSES** Section of this rule).

26. *Comment:* The designation of critical habitat would place an additional burden on landowners above and beyond what the listing of the species would require. The number of section 7 consultations will increase; areas where no San Bernardino kangaroo rat are known to occur will now be subject to consultations under section 7 of the Act since many Federal agencies previously have been making ''no effect'' determinations within unoccupied suitable habitat. Now, with the designation of critical habitat the Federal agencies may be required to consult and there could be an increase in ''may effect'' determinations, if any primary constituent elements are effected by the proposed action.

Our Response: As discussed in this rule and our economic analysis, consultations pursuant to section 7 of the Act would only occur for activities that may affect a federally listed species or critical habitat in which there is a Federal nexus. We acknowledge that there may be some additional consultations pursuant to section 7 of the Act because of the designation critical habitat for the San Bernardino kangaroo rat. However, we believe that in the areas occupied by the species (*i.e.,* approximately 97.5 percent of designated critical habitat), Federal agencies should have already been consulting with us on activities affecting the San Bernardino kangaroo rat and its habitat due to it being listed as a federally endangered species. Further, because the portion of critical habitat that is not currently known to be occupied is located downstream of occupied habitat, activities occurring in this area with a Federal nexus may have also been subjected to consultation under section 7 of the Act. Therefore, we believe that additional consultations, or efforts such as technical assistance, would be minimal as the result of the designation of critical habitat for the San Bernardino kangaroo rat.

27. *Comment:* Critical habitat for the San Bernardino kangaroo rat is needed because the current legal protections are insufficient to protect the species and its habitat (both occupied and unoccupied) from direct and indirect impacts.

Our Response: The San Bernardino kangaroo rat and lands occupied by the species currently receive protection under sections 7, 9, and 10 of the Act. Much of the remaining habitat for the San Bernardino kangaroo rat occurs in areas that are under the ACOE jurisdiction. The ACOE, as well as other Federal agencies, are required to consult with us when an action they permit, fund or authorize ''may affect'' a listed species. Additionally, habitats used by the San Bernardino kangaroo rat (*e.g.,* Riversidian alluvial fan sage scrub, coastal sage scrub, alluvial fan scrub) are considered sensitive under California Environmental Quality Act and must be addressed during that process. We will continue to work with local landowners to protect and enhance kangaroo rat habitat.

28. *Comment:* Consultations under section 7 of the Act are required for projects (*e.g.,* building, development) on private property in critical habitat because an HCP is needed for these projects regardless of occupancy because there is a ''may effect'' to critical habitat.

Our Response: We disagree with the commenter that any development project occurring in designated critical habitat for the San Bernardino kangaroo rat would require a Federal permit. A consultation pursuant to section 7 of the Act would only be triggered if there was a Federal action that may affect a listed species or critical habitat. A Federal action is any action funded, permitted or otherwise authorized by a Federal action agency. Where there is no Federal nexus, a consultation pursuant to section 7 of the Act would not be triggered. If a Federal nexus does not exist, we would work with the project proponent on the development of a HCP and issuance of an incidental take permit for actions that may affect a federally listed species. As part of this process, we are required, pursuant to section 7 of the Act, to evaluate the issuance of the incidental take permit for the proposed action to ensure that the action as proposed would not jeopardize the continued existence of the species covered under the HCP, nor result in the destruction or adverse modification of critical habitat designated within the planning area of the HCP such that it would appreciably reduce the likelihood of survival and recovery of the species.

29. *Comment:* The proposed critical habitat rule violates section 4(b)(8) of the Act by not including (1) a summary of data used in the development of the proposal, (2) relationship of the data to proposed critical habitat, and (3) a description of activities that may adversely modify critical habitat.

Our Response: We disagree with the commenter that we violated section 4(b)(8) of the Act by not including a summary of data used in the development of the proposal, did not provide a discussion of the relationship of the data to proposed critical habitat, and did not provide a description of activities that may adversely modify critical habitat. In the Background section of this final rule, and the proposal, we discuss at length the biology and ecology of the San Bernardino kangaroo rat and the relationship of this information to proposed and final critical habitat. The relationship of this data to designated critical habitat is also discussed in the Primary Constituent Elements section and in the description of each of the

critical habitat units. Within these discussions, we cite references or data sources that our conclusions are based on. A list and copy of each data source used in the development of this rulemaking are within the supporting documentation and available for inspection at the Carlsbad Fish and Wildlife Office (please refer to **ADDRESSES** section). Further, the GIS data layers used in the development of critical habitat boundaries are discussed in the Methods and Criteria Used To Identify Critical Habitat sections of the proposed rule and this final rule. Copies of these data layers are also available for inspection at the Carlsbad Fish and Wildlife Office. The description of activities that may adversely modify critical habitat is discussed in the Section 7 section of this rule. Here we list those activities that would result in the destruction or adverse modification of critical habitat for the San Bernardino kangaroo rat.

30. *Comment:* Several commenters asserted that too much critical habitat for the San Bernardino kangaroo rat was being proposed on private land and that critical habitat should only be designated on Federal lands.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes ''(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species''. The term ''conservation'', as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.''

In designating critical habitat for the San Bernardino kangaroo rat, we identified those areas that we know are essential to the conservation of this species, regardless of land ownership. The Act does not direct us to limit the designation to Federal lands, or take into consideration land ownership when developing the designation. Therefore, we analyzed the area within the current range of this San Bernardino kangaroo rat to determine which areas are biologically essential to its conservation. The areas designated as critical habitat for the San Bernardino kangaroo rat provide those habitat components essential for the survival and conservation of this species.

31. *Comment:* Critical habitat represents the Service's efforts to control local government land use and to usurp local governments' rights to regulate land uses.

Our Response: The designation of critical habitat does not create a management plan, establish a preserve, reserve, or wilderness area where no actions are allowed, it does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat (as discussed in the Critical Habitat section of this rule). Critical habitat does not ''usurp'' local governments' rights to regulate land uses. However, the designation may result in some additional effort by the State and local jurisdictions to review proposed actions in designated critical habitat pursuant to the California Environmental Quality Act and other State or local land use regulations.

32. *Comment:* One commenter asserted that we should account for the loss of critical habitat, and that this loss should be counted against the permissible ''take'' as per the California Department of Fish and Game's Natural Community Conservation Program guidelines.

Our Response: The referenced NCCP guidelines directs habitat loss to areas with low long-term conservation potential that will not preclude development of adequate preserves and ensures that connectivity between areas of high habitat value will be maintained. Under the NCCP guidelines, jurisdictions that are participating in the program can authorize the loss of or ''take'' of up to five percent of coastal sage scrub vegetation within their planning area through a habitat loss permit that requires the concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game while they are developing their regional habitat conservation plan. In these enrolled subregions, habitat loss is regulated by the local jurisdiction and Service oversight is not dependent upon a Federal nexus. Therefore, the participating jurisdictions are responsible for tracking the habitat loss authorized under their habitat loss permit. Currently, the local jurisdictions in which critical habitat for the San Bernardino kangaroo rat is being designated are not participating in the NCCP program.

Additionally, even though habitat loss under the NCCP is not applicable to consultations under section 7 of the Act, the loss of the habitat is analyzed in each section 7 consultation for effects to the baseline of listed species.

Issue 3: Economic Issues

33. *Comment:* One commenter expressed concern over the use of Service files, in particular those of the Carlsbad Fish and Wildlife Office, to extrapolate future consultations, project modifications, and re-initiation of consultations based on consultation histories for the purpose of evaluating potential economic effects of the designation. The commenter cited the findings of a recent Government Accounting Office report that indicated that the files at the Carlsbad Fish and Wildlife Office were unorganized, incomplete, and poorly managed.

Our Response: As a result of the Government Accounting Office's review of the Carlsbad Fish and Wildlife Office's files and the subsequent report indicating some weaknesses in file management, we have instituted an electronic file management system which has corrected many of the apparent weaknesses. Because the San Bernardino kangaroo rat has only been listed since 1998, and it has been a highly scrutinized listed species, files and information relevant to the San Bernardino kangaroo rat have been, and are, well organized, complete, and properly managed. Therefore, we have a high level of confidence in information extrapolated from those files. Additionally, as discussed in the draft economic analysis, values associated with future costs attributable to future consultations, project modifications, etc. are averaged from data collected at Fish and Wildlife Offices across the country.

34. *Comment:* The public comment period for the Economic Analysis must be at least 60 days long.

Our Response: According to Code of Federal Regulations (CFR) 424.16 (c)(2), we are required to have a public comment period of ''at least 60 days * * * following publication in the **Federal Register** of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat.'' We published the proposed rule to designate critical habitat for the San Bernardino kangaroo rat on December 8, 2000 (65 FR 77178), and accepted comments from the public for 60 days, until February 6, 2001. The comment period was reopened from September 4, 2001, to October 4, 2001 (66 FR 46251), to allow for additional comments on the proposed designation, and comments on the draft economic analysis on the proposed critical habitat. We have fulfilled our requirements under the Act and the CFR regarding the

public comment period for the proposed designation of critical habitat for the San Bernardino kangaroo rat.

35. *Comment:* We violated the Regulatory Flexibility Act by not preparing and providing for public comment a detailed initial regulatory flexibility analysis at the same time as the proposed rule.

Our Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic impact on a substantial number of small entities and as a result, neither an initial or final regulatory flexibility analysis is required. Please refer to the sections, Economic Analysis and Regulatory Flexibility Act for further discussions concerning the potential economic effects for this designation.

36. *Comment:* Demographic and economic information regarding the Soboba Band of Luiseño Indians was included in the Draft Economic Analysis of Critical Habitat Designation for the San Bernardino kangaroo rat, yet they were not personally contacted regarding this information.

Our Response: Although we try to contact as many stakeholders as possible, we are not able to contact every potential stakeholder in order for us to develop a draft economic analysis due to time and budget constraints. Especially in light of the limited resources and time available to us, we believe that we were adequately able to understand the issues of concern to local communities based on public comments submitted on the proposed rule, on transcripts from public hearings, and from detailed discussions among our staff and with representatives from other Federal, State, Tribal, and local government agencies, as well as some landowners. Information that was used in the draft Economic Analysis regarding the Soboba Band of Luiseño Indians was obtained from existing documents available to the Service. Based on comments during the public comment period, we attempted to update the information in the Addendum to the Economic Analysis on the Soboba Band of Luiseño Indians. We obtained publicly available information regarding the Tribe from a U.S. Bureau of Indian Affairs web site and included it in our Addendum. In addition, we met with the Tribe during the development of the critical habitat designation (September 19, 2001) to discuss the potential impacts on Tribal lands. After discussions with the Tribe and analysis of our biological and physical data, we have revised the boundaries relative to Tribal lands.

37. *Comment:* Several commenters expressed concern that the proposed rule was not accompanied by an economic analysis as required by law.

Our Response: Section 4(b)(2) of the Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the San Bernardino kangaroo rat in the **Federal Register** on December 8, 2000 (65 FR 77178). At that time, our Division of Economics and their consultants Industrial Economics, Inc. initiated the draft economic analysis. The draft Economic Analysis of the proposed critical habitat designation was made available for public comment and review beginning on September 4, 2001 (66 FR 46251). Following a 30-day public comment period on the proposal and draft Economic Analysis, a final Addendum to the Economic Analysis was written based on public comments. Both the draft Economic Analysis and final Addendum were used in the development of this final designation of critical habitat for the San Bernardino kangaroo rat. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

38. *Comment:* The draft Economic Analysis does not provide enough information to conduct an analysis pursuant to section 4(b)(2) of the Act.

Our Response: We disagree that the Economic Analysis does not provide sufficient information to make an informed decision under section 4(b)(2) of the Act. We believe that the Economic Analysis very specifically discusses likely impacts to entities based on probable land use activities. Furthermore, the Addendum very specifically addresses weaknesses in the draft Economic Analysis that were identified during the public comment period. Taken together, we believe both documents adequately identify where the potential economic impacts of the proposed rule may lie and the assumptions that were necessary to generate these estimates. Therefore, they are sufficient to identify any areas where the economic costs may outweigh the biological benefits of the designation.

39. *Comment:* Specific lands should be excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act because the economic effects of excluding particular areas outweigh the benefits.

Our Response: Section 4(b)(2) of the Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. As discussed in this final rule and our economic analyses for this rulemaking, we have determined that no significant adverse economic effects will result from this critical habitat designation. Further, based on our re-evaluation of lands proposed as critical habitat, we believe that the designation of the lands in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4 (b)(2) of the Act.

40. *Comment:* The Service is obligated to consider ''other relevant impacts'' in our analysis pursuant to section 4(b)(2) of the Act for potential exclusions from critical habitat such as the ''projected'' housing crisis in southern California.

Our Response: As previously discussed in this final rule, section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species.

We are aware that some of the land that we have designated as critical habitat for the San Bernardino kangaroo rat faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to a Federal nexus. As a result, we expect that future consultations will, in part, include planned and future real estate development.

However, we believe that these resulting consultations will not take

place solely with respect to critical habitat issues. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation regardless of the critical habitat designation. Again, as we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or its critical habitat.

41. *Comment:* Several commenters were concerned that the critical habitat designation would have significant adverse economic impacts to particular projects, agencies, and/or the economic recovery of entire region.

Our Response: During the development of critical habitat for the San Bernardino kangaroo rat, we conducted an analysis of the economic impacts that were likely to occur as a result of the designation. The results of our analysis are contained in our draft Economic Analysis and the final Addendum to the Economic Analysis. Because the areas being designated are primarily occupied, our Economic Analysis concluded that the designation would not result in significant economic impacts to the lands being designated as critical habitat or the economic recovery of the region as a whole.

42. *Comment:* The Draft Economic Analysis of Critical Habitat Designation for the San Bernardino Kangaroo Rat is flawed, inaccurate, contains numerous errors, and makes improper assumptions.

Our Response: As previously discussed, section 4(b)(2) of the Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the San Bernardino kangaroo rat in the **Federal Register** on December 8, 2000 (65 FR 77178). At that time, our Division of Economics and their consultants Industrial Economics, Inc., initiated the draft Economic Analysis. The draft Economic Analysis of the proposed critical habitat designation was made available for review and public comment during a 30-day public comment period beginning on September 4, 2001 (66 FR 46251). Based on the public comments received during the open comment period, a final Addendum to the Economic Analysis of critical habitat for the San Bernardino kangaroo rat was drafted. This final Addendum addressed the concerns raised through the comment period and took into consideration new data and a revised methodology. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents. Copies of both the draft Economic Analysis and the final Addendum are in the supporting record for this rulemaking and can be inspected by contacting the Carlsbad Fish and Wildlife Office (refer to the **ADDRESSES** section of this rule).

43. *Comment:* The Economic Analysis failed to adequately estimate various potential economic impacts.

Our Response: In the Addendum to the Economic Analysis of Critical Habitat Designation for the San Bernardino Kangaroo Rat we conducted a revised analysis to address all concerns that were brought up during the public comment process. In some instances we obtained additional data and increased our estimates, in other instances we presented arguments/rebuttals to concerns mentioned by particular commenters which explained why our estimate might be more accurate/appropriate. Please refer to the Addendum to the Economic Analysis for a more thorough discussion regarding potential economic impacts.

44. *Comment:* The draft Economic Analysis had errors in the land ownership data.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are directed to use the best scientific and commercial data available in determining which areas to propose as critical habitat. We recognize that data used in our analysis may not be the most accurate relative to land ownership. The data concerning land ownership is obtained from a variety of sources including Federal and State agencies, data clearing-houses, and local and county jurisdictions. Once data is obtained by the lead agency or data source, time is required to process and verify the data, which may take up to one to two years. Consequently, the data that we obtain for our analysis may be one to two years older than what is reflective of current land ownership. As best as possible, we attempt to correct discrepancies or errors that are detected in the data. However, there will most likely be some factor of error in the data.

45. *Comment:* No monetary benefits for the survival of the species were included in the draft Economic Analysis.

Our Response: While we have acknowledged the potential for society to experience such benefits in our economic analyses for critical habitat rulemakings, our ability to actually measure these benefits in any meaningful way is difficult and imprecise at best. While we are aware of many studies that attempt to identify the value (in monetary units) of listed species, open space, the use of public lands for recreational purposes, the cost of sprawl, etc.; few of these studies provide any meaningful information that can be used to develop estimates associated with a critical habitat designation. The designation of critical habitat does not necessarily inhibit development of private property, which makes it difficult to draw upon the literature of the economic values of open space to identify potential benefits of critical habitat designation. Also, while some economic studies attempt to measure the social value of protecting endangered species, the species that are often valued are well known and easy to identify (*e.g.* bighorn sheep) in contrast to other species such as the San Bernardino kangaroo rat. Furthermore, the values identified in these studies would be most closely associated with the listing of a species as endangered or threatened because the listing serves to provide the majority of protection and conservation benefits under the Act.

While we will continue to explore ways that will allow us to provide more meaningful descriptions of the potential benefits associated with a critical habitat designation, we believe that due to the current lack of available data specific to these rulemakings, along with the time and resource constraints imposed upon the Service, the benefits of a critical habitat designation are best expressed in biological terms that can then be weighed against the expected social costs of the rulemaking.

46. *Comment:* The draft Economic Analysis violates the Endangered Species Act and the Administrative Procedure Act by limiting its scope to a ten year time frame.

Our Response: Neither the Endangered Species Act nor the Administrative Procedure Act address limitations on a time frame for the scope of economic analyses for critical habitat rules. In developing the Economic Analysis we attempted to estimate the impacts of critical habitat designation on activities that are ''reasonably foreseeable.'' Small changes in current trends, plans, and projections (in land use and economic estimates) may have large effects on long-range predictions. Independent of these uncertainties, the endangered status of the kangaroo rat may change in the future (*e.g.* from endangered to recovered). A change in status may reduce the need for the

critical habitat designation. Thus, in order to reduce uncertainty, the analysis bases estimates on activities that are likely to occur within a ten-year time horizon. Cost estimates beyond this ten-year time horizon are likely to be highly inaccurate because socioeconomic and other conditions may shift dramatically.

47. *Comment:* The draft Economic Analysis is not a full analysis. It is still an incremental analysis, and it is not in compliance with the recent Tenth Circuit Court ruling on the southwestern willow flycatcher critical habitat.

Our Response: On May 11, 2001, the U.S. Court of Appeals in the Tenth Circuit issued a ruling that addressed the analytical approach used by the Service to estimate the economic impacts associated with the critical habitat designation for the southwestern willow flycatcher. Specifically, the court rejected the approach used by the Service to define and characterize baseline conditions. Defining the baseline is a critical step within an economic analysis, as the baseline in turn identifies the type and magnitude of incremental impacts that are attributed to the policy or change under scrutiny. In the flycatcher analysis, the Service defined baseline conditions to include the effects associated with the listing of the flycatcher and, as is typical of many regulatory analyses, proceeded to present only the incremental effects of the rule.

The court's decision, in part, reflects the uniqueness of many of the more recent critical habitat rulemakings. Specifically, the flycatcher was initially listed by the Service as an endangered species in 1995, several years prior to designating critical habitat. Once a species has been officially listed as endangered under the Act, it is afforded special protection under Federal law. In particular, it is illegal to ''take'' a protected species without authorization once it is listed. Take is defined to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Implementing regulations promulgated by the Service further define ''harm'' to mean ''. . . an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.''

Because the southwestern willow flycatcher was initially listed as endangered by the Service in 1995, several years before the designation of critical habitat, the flycatcher, along with its habitat, already received considerable protection before the designation of critical habitat in 1997. As a result, the economic analysis concluded that the resulting impacts of the designation would be insignificant. This conclusion was based on the facts that: (1) The designation of critical habitat only requires the Federal government to consider whether their actions could adversely modify critical habitat; and (2) the Federal government already was required to consult on actions that may adversely affect the flycatcher and to ensure that its actions did not jeopardize the flycatcher.

For a Federal action to adversely modify critical habitat the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in the recovery of the species. The Service defines jeopardy, which was a pre-existing condition prior to the designation of critical habitat, as to ''engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.'' The recovery standard is used in the definition of both terms and as a result, the additional protection afforded the flycatcher due to the designation of critical habitat was determined to be negligible.

The court, however, considered why Congress would want an economic analysis performed by the Service when making a decision about designating critical habitat if in fact the designation of critical habitat adds no significant additional protection to a listed species. In the court's mind, ''(b)ecause (the) economic analysis done using the Service's baseline model is rendered essentially without meaning by 50 CFR 402.02, we conclude Congress intended that the Service conduct a full analysis of all of the economic impacts of a critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes.''

Even though the court's ruling applies only to the designation of critical habitat for the southwestern willow flycatcher, this analysis attempts to comply with the court's instructions by revising the approach to defining baseline conditions within the areas of proposed critical habitat. Specifically, this analysis presents a detailed discussion of existing Federal, State, and local requirements and both current and planned activities within proposed critical habitat that are reasonably expected to occur regardless of whether the area is designated as critical habitat. Only after considering how these activities most likely will be affected given existing conditions, does the analysis estimate how the designation of critical habitat could impact forecasted activities.

This approach to baseline definition employed in the analysis of the designation of critical habitat for the San Bernardino kangaroo rat is similar to that employed in previous approaches, in that the goal is to understand the incremental effects of a designation. However, it does provide more extensive discussion of pre-existing baseline conditions than previous critical habitat economic analyses. Typical economic analyses concentrate mostly on identifying and measuring, to the extent feasible, economic effects most likely to occur because of the action being considered. Baseline conditions, while identified and discussed, are rarely characterized or measured in any detailed manner because by definition, these conditions remain unaffected by the outcome of the decision being contemplated. While the goal of this analysis remains the same as previous critical habitat economic analyses, that is to identify and measure the estimated incremental effects of the proposed rulemaking, the information provided in this analysis concerning baseline conditions is more detailed than that presented in previous studies. The final addendum to this analysis provided further information concerning the baseline and potential incremental effects of the designation of critical habitat for the San Bernardino kangaroo rat.

Summary of Changes From the Proposed Rule

In the development of our final designation of critical habitat for the San Bernardino kangaroo rat we made several significant changes to our proposed designation based on a review of public comments received on the proposed designation and the draft Economic Analysis and a re-evaluation of lands proposed as critical habitat. As discussed in the Methods and Criteria Used To Identify Critical Habitat sections of this final rule, we re-evaluated the lands proposed as critical habitat for the San Bernardino kangaroo rat based on public comment, more recent aerial photography, and additional occurrence information obtained following the publication of the proposal. The refinements to the amount of land determined to be essential for the San Bernardino kangaroo rat and incorporated into this final designation resulted in a net

reduction of approximately 8,938 ha (22,113 ac) lands. The primary changes for this final designation include the following: (1) The removal of the Jurupa Hills and Reche Canyon proposed critical habitat units (units 5 and 6, respectively), and the removal of the San Timoteo Canyon portion of proposed critical habitat unit 1; (2) the removal of the majority of lands within the former Norton Air Force Base from designated critical habitat; (3) a reduction in the lands being designated as critical habitat on the Soboba Tribal Reservation; and (4) a refinement in our mapping methodology.

Based on available data and evaluation of more recent aerial photography, we determined that we did not have sufficient information to indicate that the lands within Jurupa Hills and Reche Canyon proposed as critical habitat units 5 and 6, respectively, and those lands within the San Timoteo Canyon portion of proposed critical habitat unit 1 are essential to the long-term conservation of the San Bernardino kangaroo rat. Each of these areas contains small isolated populations of the San Bernardino kangaroo rat. We believe these areas are not essential due to habitat disturbance and encroachment and the degree of isolation due to urban development. Consequently, these lands were removed from the final designation of critical habitat for the San Bernardino kangaroo rat.

Based on our re-evaluation and refinement during the development of this final rule, we determined that most of the land within the former NAFB was too highly degraded to provide for the conservation of the species and, therefore, was removed from this final designation. Those lands south of the runway and adjacent to the Santa Ana River channel have been determined to be essential to the long-term conservation of the San Bernardino kangaroo rat due to the existing suitable habitat and current populations that occupy this area.

In our proposed critical habitat rule, we indicated that approximately 465 ha (1,150 ac) of lands within the Soboba Band of Luiseño Indians Reservation in western Riverside County were essential for the conservation of the San Bernardino kangaroo rat. In the development of the final critical habitat designation for the San Bernardino kangaroo rat, we re-evaluated these Tribal lands to determine if they were essential to the conservation of the kangaroo rat and whether they should be designated as critical habitat. The result of this analysis and refinement was the reduction of critical habitat on Tribal land to 290 ha (710 ac). Please refer to our response to Comment 18 and the section Government-to-Government Relationship With Tribes for further information pertaining to the inclusion of lands within the Soboba Band of Luiseño Indians Reservation in critical habitat.

Lastly, for the proposed rule, we identified a line around those lands we believed to be essential to the conservation of the San Bernardino kangaroo rat. We then described these essential habitat lines using a 100-meter UTM grid. By using this grid, lands not essential to the conservation of the species were included in critical habitat as a relic of the square grid cell. To better describe these lands we determined to be essential for this final designation, we defined our essential line using UTM coordinates instead of the 100-meter UTM grid. We were able to use the UTM coordinates for the critical habitat designation due to the existence of readily identifiable urban features that defined the edge of the critical habitat. This resulted in a better refinement of the boundaries of critical habitat along the urban interface and a reduction and removal of approximately 2,024 ha (5,000 ac) of lands from the final designation that we determined not to be essential to the conservation of San Bernardino kangaroo rat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft Economic Analysis was conducted to estimate the potential economic effect of the proposed designation. The draft analysis was made available for public review on September 4, 2001 (66 FR 46251). We accepted comments on the draft analysis until October 4, 2001. Additionally we held two public hearings on the proposed designation and the draft Economic Analysis on September 20, 2001, in San Bernardino, California.

Our draft Economic Analysis evaluated potential future effects associated with the listing of the San Bernardino kangaroo rat as an endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with (1) conducting section 7 consultations associated with the listing or with the critical habitat, including technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits.

The majority of consultations resulting from the critical habitat designation for the San Bernardino kangaroo rat are likely to address land development, road construction or road expansion activities, sand and gravel mining activities, and water management activities. The draft analysis estimated that the critical habitat designation would not result in a significant economic impact, and estimated the potential economic effects due to the designation over a 10-year period ranging between $4.4 to $28.2 million.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis and a re-evaluation of the analysis of potential economic effects of the designation. Based on this new analysis, it was determined that there would be the potential for additional consultations and assistance over and above the estimate projected in the draft analysis. Subsequently, the addendum concluded that the designation may result in potential economic effects ranging from between $15.7 to $130.7 million over a 10-year period. The addendum concluded that economic impacts anticipated from the designation of critical habitat for the

San Bernardino kangaroo rat were not significant. Additionally, these values may be an overestimate of the potential economic effects of the designation because the analysis was based on the proposal, and the final critical habitat was reduced by approximately 8,900 ha (22,000 ac), including several units proposed for designation.

A more detailed discussion of our analyses are contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the San Bernardino kangaroo rat (September 2001) and the Addendum to Economic Analysis of Critical Habitat Designation for the San Bernardino kangaroo rat (March 2002). Both documents are included in the supporting documentation for this rule making and available for inspection at the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** Section).

Required Determinations

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

a. This rule, as designated, will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis therefore is not required. The San Bernardino kangaroo rat was listed as an endangered species in 1998. Since that time, we have conducted ten formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species.

The areas designated as critical habitat are within the geographic range occupied by the San Bernardino kangaroo rat and are considered predominately occupied, with less than 2.5 percent of the lands designated not known to be currently occupied. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of areas within the geographic range occupied by the San Bernardino kangaroo rat has little, if any, incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat although they continue to be bound by the provisions of the Act concerning ''take'' of the species. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

b. This rule, as designated, will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the San Bernardino kangaroo rat since the listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any significant restrictions in addition to those that now exist in those areas currently known to be occupied by the San Bernardino kangaroo rat, an estimated 97.5 percent of designated critical habitat. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

c. This rule, as designated, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

d. OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review. Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. In this rule, we are certifying that the critical habitat designation for the San Bernardino kangaroo rat will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Current activities with Federal involvement that may require consultation include: regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act; regulation of water flows, damming, diversion, and channelization by any Federal agencies; regulation of grazing, mining, and recreation by the BLM, Forest Service, or the Service; road construction, maintenance, and right of way designation; regulation of agricultural activities; regulation of airport

improvement activities by the Federal Aviation Administration; hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; construction of communication sites licensed by the Federal Communications Commission; and activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency. In the Economic Analysis for the proposed rule, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects to range between $15.7 to $130.7 million dollars over a ten year period.

In determining whether this rule could ''significantly affect a substantial number of small entities,'' the Economic Analysis first determined whether critical habitat could potentially affect a ''substantial number'' of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Based on the past consultation history of the kangaroo rat, the economic analysis anticipated that the designation of critical habitat could affect small businesses associated with six different industries, including residential, commercial, and industrial development; mining for sand and gravel, airport activities, and water conservation and supply activities.

To be conservative (*i.e.,* more likely overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis. The number of small business estimated to be impacted from the proposed rule range from less than one percent of commercial/retail development firms to almost eight percent of water conservation and supply firms. Because these estimates are far less than the 20 percent threshold that would be considered ''substantial,'' the analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for the San Bernardino kangaroo rat. The draft Economic Analysis and final Addendum contain the factual bases for this certification and contain a complete analysis of the potential economic affects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** section).

In general, two different mechanisms in section 7 of the Act consultations could lead to additional regulatory requirements. First, if we conclude in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we will make every effort to offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or destroying or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption was obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Nonetheless, the economic analysis provided an estimate of the number of small businesses that could experience significant economic impact. The analysis conservatively assumed the unit cost to a private party for participating in a section 7 consultation and any associated project modification was the upper-bound estimate identified in the analysis. Under such an assumption, the analysis concluded that less than two percent of small business could be significantly impacted by the proposed designation.

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for the San Bernardino kangaroo rat will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the economic analysis, the designation is anticipated to have a total estimated economic effect ranging between $15.7 to $130.7 million over a 10-year period. Assuming that these costs are spread evenly over the period of analysis, annual effects to the economy could range between $1.6 and $13 million. Additionally, these values are very likely to be an overestimate of the potential economic effects of the designation because the economic analysis evaluated potential impacts associated with the area proposed as critical habitat and this area has been significantly reduced in this final rule.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat include urban and agricultural development, water management and conservation facilities, and sand and gravel mining operations. Significant energy production, supply, and distribution facilities are not included within designated critical habitat. Therefore, this action does not represent a significant action effecting energy production, supply, and distribution facilities; and no Statement of Energy Effects is required. Additionally, the area designated as critical habitat is predominately considered to be occupied by the listed species, with only an estimated 2.5 percent of the designation not known to be currently occupied. Therefore, any consultation required pursuant to section 7 of the Act by a Federal agency undertaking an action in this area would likely be triggered by the presence of the listed species and not solely by this designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule, as designated, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule, will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 13,485 ha (33,295 ac) of lands in Riverside and San Bernardino counties, California as critical habitat for the San Bernardino kangaroo rat. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation of critical habitat for the San Bernardino kangaroo rat.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. We will coordinate the designation of critical habitat for the San Bernardino kangaroo rat with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the San Bernardino kangaroo rat imposes no additional restrictions to those currently in place and, therefore, has little significant incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival and conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case consultations under section 7 of the Act to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated units to assist the public in understanding the habitat and conservation needs of the San Bernardino kangaroo rat.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended We published a notice outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This final designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we are coordinating with federally recognized Tribes on a Government-to-Government basis. Further, Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. The Secretarial Order further states that in designating critical habitat, ''the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands''.

In our proposed critical habitat rule, we indicated that approximately 465 ha (1,150 ac) of lands within the Soboba

Band of Luisẽno Indians Reservation in western Riverside County were essential for the conservation of the San Bernardino kangaroo rat. In the development of the final critical habitat designation for the San Bernardino kangaroo rat, we re-evaluated these Tribal lands to determine if they were essential to the conservation of the kangaroo rat and whether they should be designated as critical habitat. Based on distribution information for the San Bernardino kangaroo rat in the San Jacinto Wash, the continuity of kangaroo rat habitat extending up the tributaries adjacent to occupied habitat, and slope, vegetation, and disturbance information; we have re-defined the area designated as critical habitat on the Soboba Band of Luisẽno Indians Reservation. Additionally, we refined the 100 meter grid line used in the proposal to the essential critical habitat line along the edges of the two washes and the main portion of the river on Tribal land and removed from the designation a non-essential disturbed area on the western edge of Tribal lands on the north side of the river that is proposed for economic development. The result of this analysis and refinement was the reduction of critical habitat on Tribal land to 290 ha (710 ac). The remaining area on Tribal lands is essential to the conservation of the San Bernardino kangaroo rat because it supports several populations and provides continuity between two adjacent areas of essential habitat.

Currently the Soboba Band of LuisẽNo Indians does not have a resource management plan which provides protection or conservation for the San Bernardino kangaroo rat and its' habitat. We are committed to maintaining a positive working relationship with the Tribe and will continue our attempts to work with them on developing a resource management plan for the Reservation including conservation measures for the kangaroo rat. However, due to time constraints for completing this final rule, the lack of an existing resource management plan covering the San Bernardino kangaroo rat, we were required to finalize the designation based on our own analysis of the relative importance of the lands within the Soboba Band of Luisẽno Indians Reservation for the conservation of the San Bernardino kangaroo rat.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this designation are Douglas Krofta and Mark A. Elvin , Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we 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) revise the entry for ''Kangaroo rat, San Bernardino Merriam's'' under ''MAMMALS'' 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						
MAMMALS							
*	*	*	*	*	*		*
Kangaroo rat, San Bernardino Merriam's..	*Dipodomys merriami parvus*.	U.S.A., CA	Entire	E	632E, 645	17.95(a)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(a) by adding critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows.

§ 17.95 Critical habitat-fish and wildlife.

(a) Mammals.

* * * * *

San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*)

(1) Critical Habitat Units are depicted for San Bernardino and Riverside counties, California, on the maps below.

(2) Within these areas, the primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements include:

(i) Soil series consisting predominantly of sand, loamy sand, sandy loam, or loam;

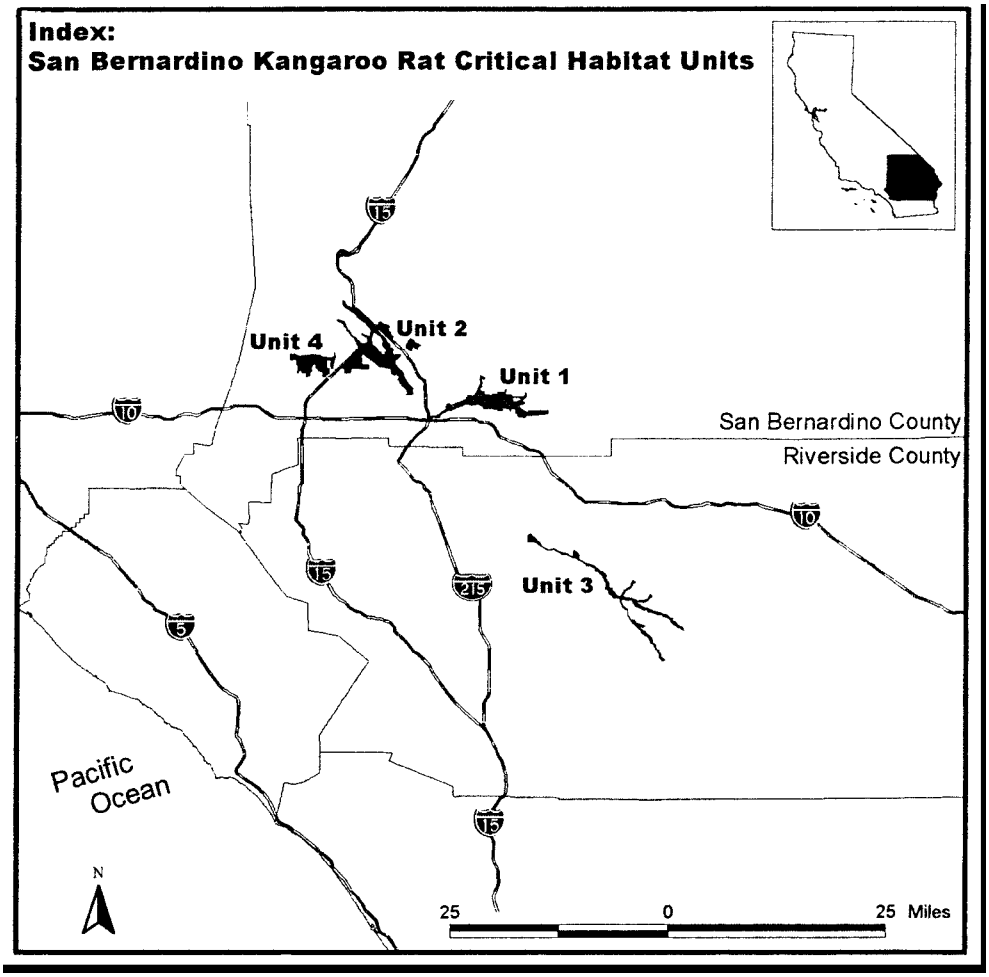
(ii) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral, with a moderately open canopy.

(iii) River, creek, stream, and wash channels; alluvial fans; floodplains; floodplain benches and terraces; and historic braided channels that are subject to dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the San Bernardino kangaroo rat. These areas may include a mosaic of suitable and unsuitable soils and vegetation that either (A) occur at a scale smaller than the home range of the animal, or (B) form a series of core areas and linkages between them.

(iv) Upland areas proximal to floodplains with suitable habitat (e.g., floodplains that support the soils, vegetation, or geomorphological, hydrological and aeolian processes essential to this species). These areas are essential due to their geographic proximity to suitable habitat and the functions they serve during flooding events. These areas may include marginal habitats such as agricultural lands that are disced annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

(3) Existing features and structures, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units-Index Map Follows.



(5) Unit 1: Santa Ana River and Wash, San Bernardino County, California

(i) From USGS 1:24,000 quadrangle maps Harrison Mountain (1980), Yucaipa (1988), Redlands (1980), and San Bernardino South (1980), California, lands in the Santa Ana Wash bounded by the following Universal Transverse Mercator (UTM) North American Datum 1927 (NAD27) coordinates (E, N): 482376, 3776863; 482520, 3777020; 482425, 3777267; 482403, 3777426; 482590, 3777477; 482714, 3777417; 482755, 3777375; 482793, 3777315; 482847, 3777277; 482942, 3777261; 482977, 3777201; 483050, 3777175; 483142, 3777191; 483238, 3777159; 483282, 3777128; 483285, 3777023; 483257, 3777023; 483250, 3776778; 483168, 3776763; 483088, 3776797; 483003, 3776807; 482965, 3776855; 482885, 3777007; 482841, 3777032; 482603, 3777036; 482552, 3776943; 482558, 3776715; 482692, 3776286; 482708, 3776201; 482717, 3775426; 482568, 3775426; 482435, 3775170; 482428, 3774953; 482444, 3774750; 482574, 3774556; 483247, 3774550; 483244, 3773978; 484038, 3773981; 484038, 3773734; 484746, 3773730; 484752, 3774140; 485628, 3774128; 485628, 3774419; 485787, 3774423; 485787, 3774391; 486009, 3774391; 486006, 3774492; 486073, 3774489; 486298, 3774362; 486270, 3774286; 486222, 3774267; 486149, 3774267; 486108, 3774238; 486079, 3774194; 486076, 3774149; 486197, 3774162; 486463, 3774356; 486717, 3774438; 486873, 3774496; 486994, 3774578; 487038, 3774715; 487044, 3774848; 487022, 3774953; 486994, 3774988; 487159, 3774981; 487194, 3774889; 487244, 3774788; 487191, 3774543; 487111, 3774435; 486879, 3774229; 486848, 3774127; 488140, 3773892; 488251, 3773835; 488324, 3773775; 488394, 3773680; 488467, 3773622; 488546, 3773578; 488649, 3773548; 488651, 3773549; 490156, 3773511; 490219, 3773476; 490121, 3773435; 490019, 3773387; 489994, 3773356; 489896, 3773311; 489778, 3773356; 489730, 3773403; 488597, 3773435; 488378, 3773286; 488384, 3773257; 488356, 3773124; 488499, 3772708; 488645, 3772622; 489184, 3772616; 489762, 3772965; 489816, 3773035; 490029, 3773124; 490134, 3773086; 490327, 3773191; 490324, 3773372; 490296, 3773432; 490264, 3773480; 490248, 3773495; 490334, 3773572; 490429, 3773562; 490585, 3773657; 490769, 3773784; 490804, 3773934; 490826, 3774080; 490832, 3774172; 490804, 3774229; 490762, 3774267; 490734, 3774330; 490937, 3774334; 490978, 3774105; 490940, 3774038; 490943, 3773915;

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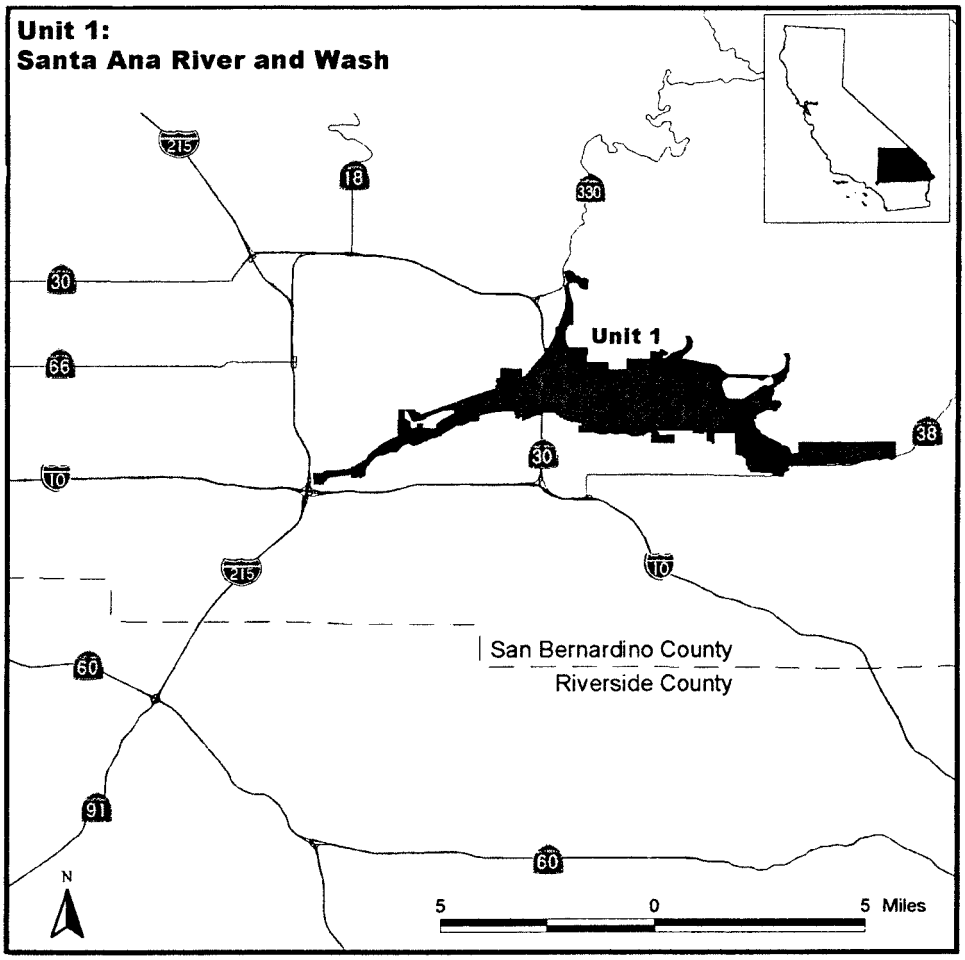
(ii) Map Unit 1 follows.



(6) Unit 2: Lytle and Cajon Creeks, San Bernardino County, California

(i) From USGS 1:24,000 quadrangle maps San Bernardino South (1980), San Bernardino North (1988), Devore (1988), and Cajon (1988), California. Subunit 2a: Land bounded by the following UTM NAD27 coordinates (E,N): 459113, 3789417; 459304, 3789431; 459431, 3789507; 459586, 3789387; 459850, 3789253; 459989, 3788993; 460389, 3788590; 460586, 3788491; 460786, 3788294; 460888, 3788218; 461088, 3788082; 461196, 3787990; 461826, 3787406; 461831, 3787409; 461999, 3787259; 462221, 3787075; 462412, 3786923; 462533, 3786856; 462701, 3786742; 463028, 3786459; 463101, 3786027; 463079, 3785989; 463291, 3785821; 463555, 3785580; 463799, 3785084; 463907, 3784954; 464007, 3784892; 464444, 3784653; 464577, 3784557; 464717, 3784399; 464780, 3784281; 464898, 3783910; 464974, 3783770; 465104, 3783608; 465231, 3783510; 465565, 3783252; 465473, 3782871; 465504, 3782792; 465806, 3782557; 465850, 3782579; 466040, 3782336; 466174, 3782446; 465946, 3781582; 466523, 3781300; 466555, 3781373; 467520, 3781351; 467581, 3781265; 466800, 3780408; 466500, 3780067; 466581, 3779690; 466679, 3779392; 466733, 3779382; 466790, 3779293; 466882, 3779236; 466882, 3779125; 466917, 3779115; 466914, 3779058; 466978, 3779039; 466987, 3778992; 467139, 3778992; 467149, 3778738; 467387, 3778725; 467597, 3778496; 467752, 3778493; 467759, 3778339; 468060, 3778026; 468174, 3777982; 468181, 3777512; 468387, 3776995; 468476, 3776804; 469061, 3775917; 469184, 3775791; 469235, 3775769; 469775, 3775232; 469756, 3775201; 469660, 3775245; 469705, 3775074; 469752, 3775026; 469752, 3774632; 469781, 3774505; 469787, 3774296; 469822, 3774175; 469857, 3774172; 469857, 3774035; 469787, 3774020; 469711, 3773972; 469619, 3773883; 469492, 3773835; 469371, 3773845; 469206, 3773858; 469051, 3773861; 468676, 3773864; 468721, 3773959; 468778, 3774035; 468876, 3774175; 468924, 3774286; 468806, 3774512; 468736, 3774620; 468711, 3774712; 468609, 3774909; 468524, 3775067; 468524, 3775107; 468432, 3775140; 468244, 3775290; 468111, 3775410; 468086, 3775483; 467927, 3775480; 467822, 3775620; 467822, 3775759; 467511, 3776109; 467409, 3776210; 467298, 3776293; 467279, 3776468; 467219, 3776566; 467139, 3776652; 467130, 3776922; 467060, 3777055; 467076, 3777088; 467720, 3777090; 466571, 3777823; 466444, 3777664; 466492, 3777566; 466324, 3777539; 466333, 3777480; 466165, 3777626; 466019, 3777741; 465958, 3777861; 465860, 3777918; 465774, 3777982; 465730, 3778071; 465777, 3778103; 465920, 3777985; 465955, 3777979; 465971, 3777963; 466012, 3777938; 466035, 3777950; 466038, 3777985; 466006, 3778058; 465755, 3778449; 465727, 3778442; 465688, 3778465; 465669, 3778519; 465685, 3778550; 465787, 3778512; 465930, 3778449; 466041, 3778382; 466139, 3778315; 466254, 3778246; 466311, 3778223; 466349, 3778312; 466416, 3778239; 466447, 3778220; 466374, 3778315; 466295, 3778407; 466190, 3778487; 465888, 3778630; 465644, 3778734; 465406, 3778830; 465269, 3778858; 465158, 3778852; 464914, 3778785; 464831, 3778938; 464723,

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457519, 3786046; 457459, 3786085; 457440, 3786227; 457392, 3786227; 457319, 3786313; 457297, 3786367; 457173, 3786424; 457110, 3786510; 456999, 3786574; 456995, 3786669; 456980, 3786786; 456891, 3786888; 456865, 3787028; 456786, 3787082; 456675, 3787170; 456633, 3787256; 456525, 3787339; 456478, 3787399; 456392, 3787370; 456208, 3787466; 455938, 3787488; 455865, 3787456; 455738, 3787612; 455671, 3787634; 455525, 3787713; 455640, 3787815; 455754, 3787847; 456059, 3787764; 456157, 3787704; 456332, 3787653; 456472, 3787567; 456570, 3787590; 456754, 3787586; 456935, 3787523; 457014, 3787466; 457065, 3787351; 457129, 3787158; 457167, 3787018; 457164, 3786910; 457136, 3786794; 457237, 3786701; 457192, 3786647; 457205, 3786564; 457411, 3786459; 457576, 3786269; 457586, 3786132; 457640, 3786034; 457767, 3785929; 457926, 3785843; 458059, 3785678; 458091, 3785596; 458043, 3785485; 458097, 3785377; 458100, 3785243; 458208, 3785065; 458294, 3784980; 458361, 3784916; 458450, 3784888; 458523, 3784846; 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(ii) Subunit 2b: Land bounded by the following UTM NAD27 coordinates (E, N): 465795, 3784148; 464554, 3785327; 463276, 3786555; 463400, 3786918; 463325, 3786939; 463416, 3787252; 463416, 3787310; 463445, 3787388; 463849, 3787384; 463804, 3787314; 463869, 3787268; 463948, 3787260; 464187, 3787194; 464389, 3786988; 464385, 3786901; 464389, 3786815; 464286, 3786695; 464298, 3786638; 464381, 3786605; 464488, 3786695; 464541, 3786811; 464438, 3786856; 464541, 3786984; 464673, 3786984; 464682, 3786889; 465081, 3786885; 465090, 3786786; 465288, 3786691; 465490, 3786592; 465461, 3786559; 465283, 3786242; 465292, 3786102; 465263, 3785962; 465366, 3785891; 465292, 3785702; 465527, 3785558; 465572, 3785652; 465704, 3785586; 465626, 3785166; 465799, 3784939; 465997, 3784778; 466128, 3784700; 465906, 3784280; 465881, 3784300; returning to 465795, 3784148.

(iii) Subunit 2c: Land bounded by the following UTM NAD27 coordinates (E, N): 469615, 3782014; 469536, 3782017; 469485, 3782090; 469415, 3782141; 469345, 3782214; 469298, 3782239; 469263, 3782293; 469193, 3782309; 469117, 3782335; 469025, 3782325; 468942, 3782370; 468844, 3782401; 468812, 3782417; 468777, 3782376; 468625, 3782490; 468564, 3782643; 468548, 3783024; 468558, 3783141; 468609, 3783195; 468609, 3783281; 468723, 3783446; 468859, 3783671; 468910, 3783700; 468913, 3783789; 468936, 3783881; 469012, 3783894; 469021, 3784090; 469107, 3784087; 469209, 3784198; 469231, 3784284; 469599, 3784284; 469625, 3784173; 469901, 3783989; 469980, 3783881; 469898, 3783811; 469968, 3783735; 470009, 3783773; 470187, 3783732; 470209, 3783662; 470295, 3783646;

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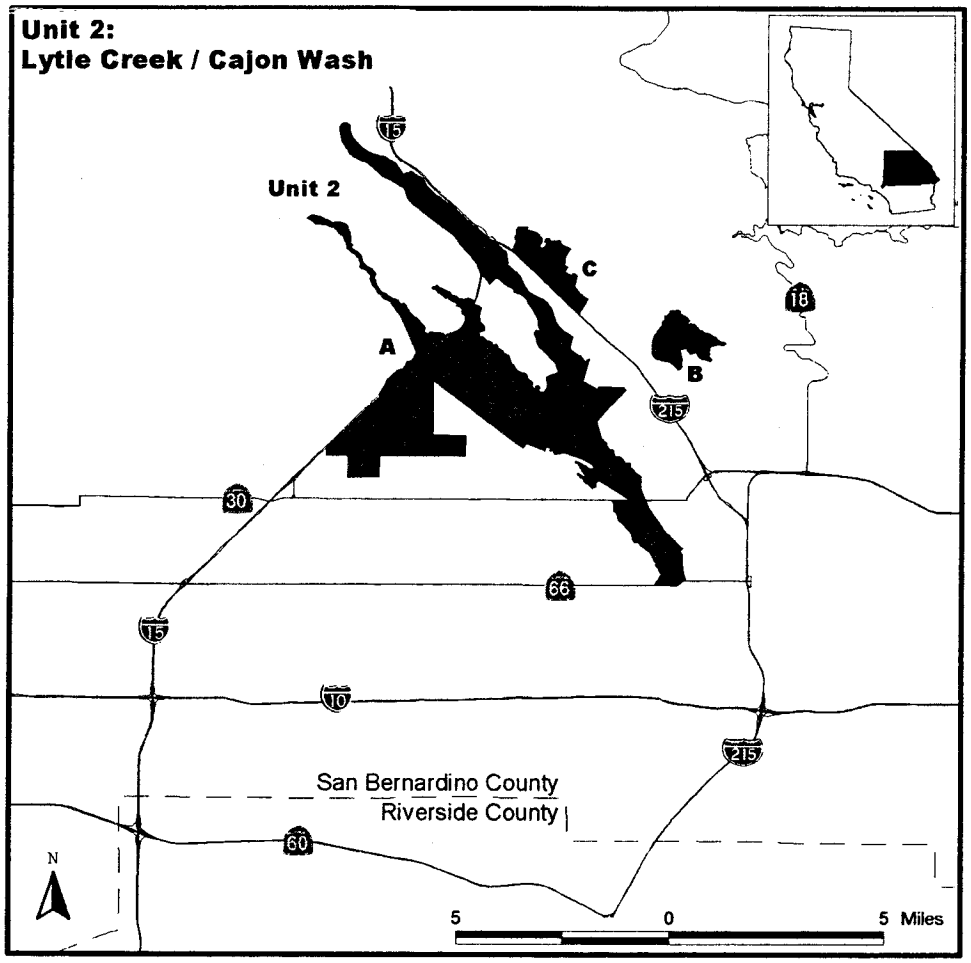
(iv) Map Unit 2 follows.



(7) Unit 3: San Jacinto River and Bautista Creek, Riverside County, California.

(i) From USGS quadrangle maps Blackburn Canyon (1988), Hemet (1979), Lake Fulmor (1988), San Jacinto (1979), and Lakeview (1979), California, land bounded by the following UTM NAD27 coordinates (E, N): 493757, 3745718; 494287, 3745394; 494490, 3745290; 494890, 3745061; 495084, 3744988; 495258, 3744978; 495389, 3744997; 495671, 3745096; 495938, 3745159; 496074, 3745175; 496284, 3745159; 496494, 3745077; 496601, 3744994; 496605, 3744994; 496884, 3744791; 497078, 3744689; 497287, 3744588; 497468, 3744524; 498024, 3744420; 498386, 3744293; 498541, 3744264; 499291, 3743826; 499484, 3743673; 499767, 3743564; 499780, 3744556; 499840, 3744728; 499846, 3744832; 499980, 3744820; 500081, 3744769; 500189, 3744693; 500278, 3744610; 500389, 3744572; 500564, 3744359; 500722, 3744178; 500872, 3743931; 500811, 3743943; 500745, 3743924; 500716, 3743762; 500751, 3743600; 500840, 3743489; 500789, 3743419; 500735, 3743213; 501688, 3742689; 502148, 3742442; 502262, 3742356; 502402, 3742293; 502415, 3742359; 502551, 3742273; 502650, 3742257; 502824, 3742232; 502932, 3742194; 503088, 3742086; 503164, 3742197; 503285, 3742095; 503358, 3742061; 503443, 3742073; 503548, 3741994; 503650, 3741956; 503758, 3741788; 503875, 3741689; 503964, 3741651; 503967, 3741594; 504028, 3741553; 504155, 3741530; 504171, 3741489; 504218, 3741467; 504275, 3741407; 504282, 3741302; 504666, 3741140; 504742, 3741076; 504872, 3740959; 505126, 3740886; 505282, 3740778; 505475, 3740676; 505522, 3740595; 505529, 3740594; 505612, 3740521; 505701, 3740400; 505853, 3740261; 505888, 3740191; 505920, 3740064; 505710, 3739854; 505787, 3739594; 505891, 3739286; 505971, 3739076; 506107, 3739054; 506145, 3738987; 506250, 3738876; 506247, 3738686;

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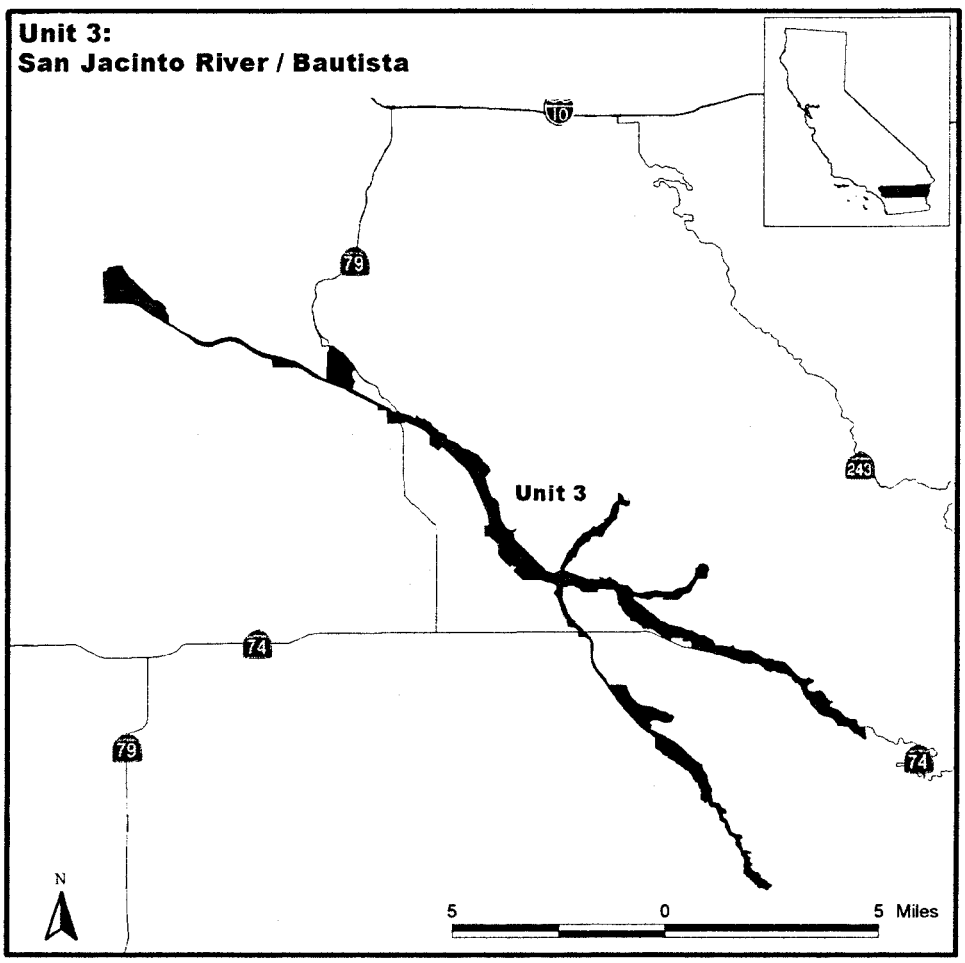
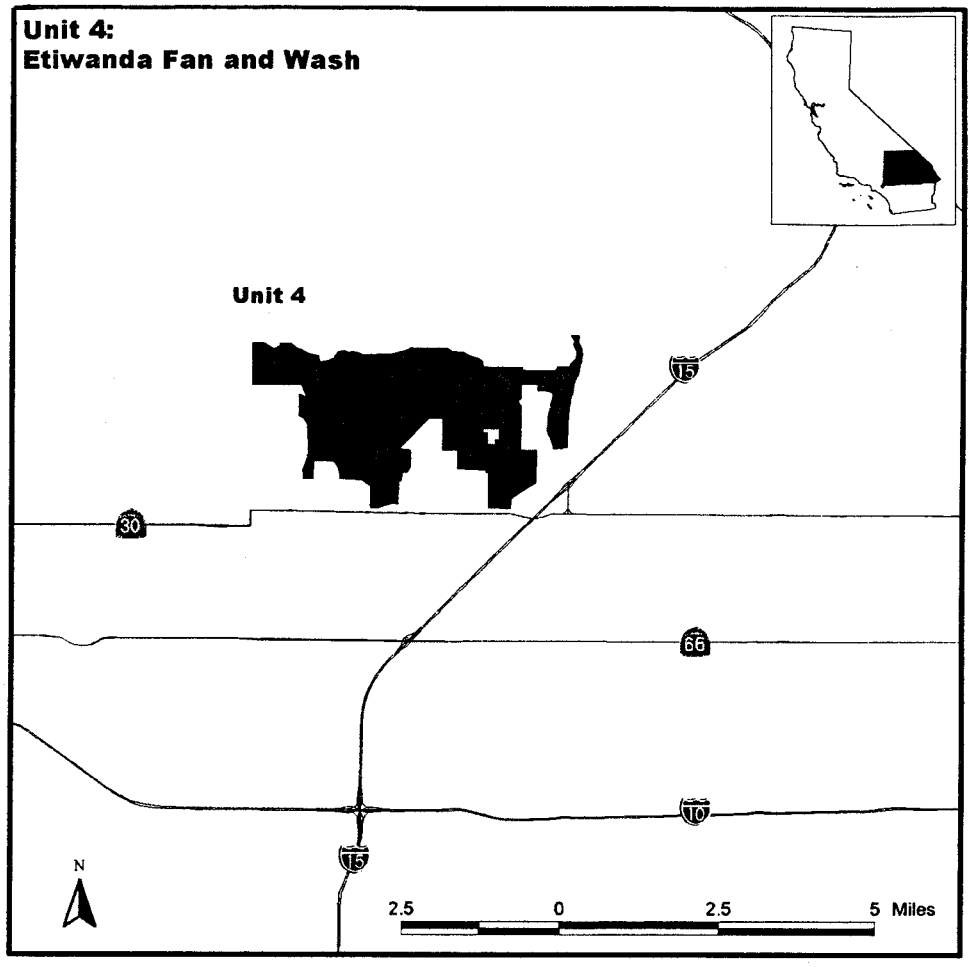
(ii) Map Unit 3 follows.



(8) Unit 4: Etiwanda Alluvial Fan and Wash, San Bernardino County, California

(i) From USGS 1:24,000 quadrangle maps Devore (1988) and Cucamonga Peak (1988), California, land bounded by the following UTM NAD27 coordinates (E, N): 449195, 3781261; 449359, 3781273; 449455, 3781238; 449550, 3781270; 449715, 3781238; 449785, 3781184; 450509, 3781194; 450909, 3781295; 451007, 3781362; 451963, 3781353; 452099, 3781270; 452376, 3781251; 452490, 3781191; 452788, 3781092; 452884, 3781003; 452896, 3780864; 453004, 3780860; 453881, 3780857; 453877, 3780816; 453988, 3780791; 454706, 3780785; 454757, 3780876; 455017, 3780886; 455217, 3781099; 455224, 3781251; 455150, 3781432; 455166, 3781559; 455081, 3781657; 455090, 3781683; 455281, 3781676; 455281, 3781483; 455344, 3781368; 455360, 3781273; 455376, 3781222; 455366, 3781022; 455347, 3781003; 455312, 3780905; 455290, 3780800; 455281, 3780689; 455189, 3780502; 455116, 3780140; 455087, 3780101; 455081, 3779987; 455052, 3779813; 455024, 3779419; 455008, 3778819; 454931, 3778809; 454865, 3778781; 454801, 3778797; 454757, 3778778; 454719, 3778797; 454671, 3778787; 454608, 3779009; 454516, 3779203; 454487, 3779282; 454509, 3779403; 454516, 3779600; 454652, 3780171; 454614, 3780232; 454446, 3780263; 454271, 3780270; 454271, 3780432; 453852, 3780435; 453861, 3780060; 453782, 3780003; 453855, 3779898; 453858, 3778752; 454255, 3778743; 454243, 3777913; 453611, 3777517; 453601, 3777263; 453046, 3777273; 453033, 3778181; 452957, 3778181; 452953, 3778244; 452242, 3778266; 452242, 3778746; 451860, 3778746; 451852, 3779565; 451509, 3779568; 450763, 3778822; 450763, 3778781; 451033, 3778755; 451029, 3778295; 450934, 3778171; 450807, 3778168; 450791, 3777962; 450734, 3777958; 450718, 3777362; 450629, 3777396; 450553, 3777396; 450229, 3777273; 450010, 3777273; 450017, 3777819; 449804, 3777987; 449244, 3778007; 449242, 3778120; 449194, 3778305; 449089, 3778466; 448581, 3778463; 448578, 3778016; 448334, 3778009; 448331, 3778174; 448299, 3778197; 448432, 3778555; 448445, 3778701; 448435, 3779371; 448385, 3779476; 448327, 3779549; 448210, 3779613; 448207, 3780168; 448397, 3780102; 448356, 3780232; 448283, 3780368; 448242, 3780419; 447032, 3780410; 447035, 3781480; 447305, 3781483; 447477, 3781394; 447562, 3781340; 447613, 3781340; 447737, 3781422; 447743, 3781467; 448007, 3781473; 448096, 3781384; 448489, 3781181; 448705, 3781156; 448731, 3780994; 448893, 3781003; 449074, 3781102; returning to 449195, 3781261; excluding land bounded by 452900, 3779300; 453300, 3779300; 453300, 3779000; 453200, 3779000; 453200, 3778900; 453000, 3778900; 453000, 3779200; 452900, 3779200; 452900, 3779300.

(ii) Map Unit 4 follows.



Dated: April 12, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–9596 Filed 4–22–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 23, 2002

Part III

Securities and Exchange Commission

17 CFR Parts 230, 239, 270, and 274
Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–8088; IC–25522; File No. S7–9–98]

RIN 3235–AG37

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Request for comments on Paperwork Reduction Act burden estimate.

SUMMARY: The Securities and Exchange Commission is adopting a new registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form is to be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. For these registrants, the form will replace the registration form currently used by unit investment trusts to register under the Investment Company Act, and the registration form currently used by unit investment trusts to offer their securities under the Securities Act. The new registration form focuses prospectus disclosure on essential information that will assist an investor in deciding whether to invest in a particular variable life insurance policy. The new form also will minimize prospectus disclosure about technical and legal matters, improve disclosure of fees and charges, and streamline the registration process by replacing two forms that were not specifically designed for variable life insurance policies with a single form tailored to these products. The Commission is also amending the registration form used by mutual funds to register under the Investment Company Act and to offer their shares under the Securities Act, to require a fee table for mutual funds that offer their shares as investment options for variable life insurance policies and variable annuity contracts.

DATES: *Effective Date:* June 1, 2002.

Compliance Dates:

1. *Form N–6:*

A. *Initial Compliance Date:* All new registration statements filed on or after December 1, 2002, for separate accounts that are registered as unit investment trusts and that offer variable life insurance policies must comply with Form N–6.

B. *Final Compliance Date:* All insurance company separate accounts that are registered as unit investment trusts and that currently offer variable life insurance policies with effective registration statements must comply with Form N–6 for post-effective amendments that are annual updates to their registration statements filed on or after December 1, 2002, and no later than December 1, 2003.

2. *Form N–1A:* All new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on or after September 1, 2002, must comply with the amendment to Form N–1A.

Comment Date: Comments on the ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 for the amendment to Form N–1A should be received by June 1, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–9–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, Katy Mobedshahi, Attorney, or Paul G. Cellupica, Assistant Director, (202) 942–0721, Office of Disclosure and Insurance Product Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting new Form N–6 [17 CFR 239.17c; 17 CFR 274.11d] for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form will be used by these separate accounts to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''). For these registrants, the proposed form will replace Forms N–8B–2 [17 CFR 274.12] and S–6 [17 CFR 239.16], currently used by unit investment trusts to register under the Investment Company Act and to offer their securities under the Securities Act. In addition, the Commission is amending Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] to require a fee table for mutual funds that offer their shares as investment options for variable life insurance policies and variable annuity contracts. The Commission also is adopting technical amendments to rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act [17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, and 230.497]; rules 8b–11 and 8b–12 under the Investment Company Act [17 CFR 270.8b–11 and 270.8b–12]; and Form N–8B–2 [17 CFR 274.12]. In a companion release, the Commission is proposing amendments to Form N–4 [17 CFR 239.17b; 17 CFR 274.11c], the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. These proposed amendments would revise the format of the fee table of Form N–4 to require disclosure of the range of expenses for all of the investment options offered through a separate account.[1]

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I. Introduction and Background

Variable Life Insurance

Variable life insurance is similar to traditional life insurance, except that the cash value and/or death benefit vary based on the investment performance of the assets in which the premium payments are invested. Under a traditional life insurance policy, premium payments are allocated to an insurer's general account and invested, consistent with state law requirements, to enable the insurer to meet its death benefit and cash value guarantees. The investment return on assets in the general account has little or no direct effect on the cash value or the death benefit received.

Premium payments under a variable life policy, in contrast, are invested in an insurance company separate account, which generally is not subject to state law investment restrictions. A variable life policyholder typically is offered a variety of investment options (*e.g.*, equity, bond, and money market mutual funds). Death benefits and cash values are directly related to performance of the separate account, although typically there is a guaranteed minimum death benefit.

Variable life insurance was introduced in the early 1970s. During the years from the end of World War II to the late 1960s, there was a significant decline in the share of savings dollars invested with life insurance companies. In an effort to counteract this trend, insurers began to offer a greater variety of products, including equity-based products such as variable life insurance. [2] In recent years, variable life insurance has become an increasingly important segment of the insurance industry. By 2000, variable life insurance accounted for 51.3% of first year individual life insurance premiums, and 19.6% of total individual life insurance premiums.[3] Since the early 1990s, assets in variable life products have grown substantially, from $4.8 billion in December 1991 to $42.8 billion in November 2001.[4]

Current Forms for Variable Life Insurance Registration

A separate account funding a variable life insurance policy most commonly is registered as a unit investment trust under the Investment Company Act.[5] Separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different open-end management investment company, or mutual fund (''Portfolio Company'').[6]

Both separate account unit investment trusts and the Portfolio Companies in which they invest are registered as investment companies under the Investment Company Act, and their securities are registered under the Securities Act. Investors in variable life insurance policies receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies. Portfolio Companies, as mutual funds, use Form N–1A to register under the Investment Company Act and to register their shares under the Securities Act.[7] Variable life separate accounts, as unit investment trusts, register under the Investment Company Act on Form N–8B–2 and register their securities under the Securities Act on Form S–6.

Forms N–8B–2 and S–6 were designed for non-separate account unit investment trusts and were adopted before the establishment of the first separate account to fund variable life insurance policies. While much of their required disclosure is useful, the forms request some information that is not typically of consequence to a buyer of variable life insurance. More importantly, many matters that would be significant to a buyer of a variable life insurance policy are not addressed at all by the forms.

Another shortcoming of Forms N–8B–2 and S–6 is that they do not reflect fundamental improvements that we have made to other investment company registration forms, such as Form N–4 for variable annuities and Form N–1A for mutual funds, which facilitate clearer and more concise disclosure to investors.[8] As a result, variable life insurance prospectuses have often been unnecessarily lengthy and complex.

Form N–6

To address these shortcomings, the Commission issued a release proposing Form N–6 for public comment (''Proposing Release'').[9] Unlike the current forms, proposed Form N–6 was specifically tailored to variable life insurance. The proposed requirements of the form focused on information that is essential to a decision to invest in a particular variable life insurance policy, and the form was intended to enhance the comparability of information about variable life insurance policies. The proposal sought to promote more effective communication of information about variable life insurance policies.

All commenters expressed strong support for proposed Form N–6.[10] Commenters stated that proposed Form N–6 would improve the disclosure that investors receive about variable life insurance. Commenters indicated that proposed Form N–6 would require disclosure of essential information in the prospectus in a concise and user-friendly format and thus would

[2] Securities and Exhange Commission (''SEC''), Division of Investment Management, Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules at 1–2 (Jan. 1973).

[3] American Council of Life Insurers, Life Insurers Fact Book 101 (2001).

[4] *Lipper Variable Insurance Products Performance Analysis,* 4th Quarter 2001 Report, Vol. I at 1–1 (Dec. 31, 2001); *Lipper Variable Insurance Products Performance Analysis Service,* Vol. I at 169 (Jan. 31, 1992).

[5] Section 4(2) of the Investment Company Act defines ''unit investment trust'' as ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust.'' 15 U.S.C. 80a–4(2).

[6] An open-end management investment company is an investment company, other than a unit investment trust or face amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Section 4(3) of the Investment Company Act [15 U.S.C. 80a–4(3)]; Section 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–5(a)(1)]. As an alternative to the structure described in the text, a variable life insurance separate account can be organized in a single-tier structure, as an open-end management investment company. Today, this structure is used by few variable life insurance registrants.

[7] 17 CFR 274.11A.

[8] Form N–1A [17 CFR 274.11A]; Form N–4 [17 CFR 274.11c]; Investment Company Act Release No. 13689 (Dec. 22, 1983) [49 FR 614] (''N–4 Proposing Release''); Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145] (''N–4 Adopting Release''); Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813] (''1982 N–1A Proposing Release''); Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] (''1983 N–1A Adopting Release''); Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] (''1997 N–1A Proposing Release''); Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916] (''1998 N–1A Adopting Release'').

[9] Investment Company Act Release No. 23066 (March 13, 1998) [63 FR 13988] (''Form N–6 Proposing Release'').

[10] The Commission received 16 comment letters from 13 commenters on proposed Form N–6. The commenters included two trade associations, ten insurance companies, and one attorney. The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's Public Reference Room in File No. S7–9–98. The comment summary is also available on the Commission's Internet website at <http://www.sec.gov/rules/extra/33–7514comsum.htm>.

facilitate decision making by investors. Commenters also recommended changes to proposed Form N–6 to improve disclosure. We are adopting proposed Form N–6 substantially as proposed, with modifications that reflect our consideration of commenters' suggestions.

Form N–6 will promote effective disclosure to variable life insurance investors, providing the following benefits:

• *Tailored Registration Form.* Form N–6 will eliminate requirements in the current registration forms that are not relevant to variable life insurance.[11] Form N–6 also will include items that are specifically addressed to variable life insurance products, such as descriptions of contractual provisions relating to premiums, death benefits, cash values, surrenders and withdrawals, and loans.[12]

• *Plain English.* The Commission's plain English rule will apply to the front and back cover pages and the risk/benefit summary in the variable life insurance prospectus.[13] This should result in better, clearer disclosure to investors.

• *Reducing Complex and Lengthy Prospectus Disclosure.* Form N–6 will streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and a statement of additional information (''SAI''), containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.

• *Standardized Fee Information.* Form N–6 will require variable life insurance registrants to provide a uniform, tabular presentation of fees and charges, in order to improve the disclosure to investors of the often complex charges associated with variable life insurance policies and increase the comparability of charges among policies.

• *Integrated Disclosure Document.* Form N–6 will provide variable life insurance registrants with an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.

[11] *See, e.g.,* Item 18(d) of Form N–8B–2 (requiring disclosure of schedule of distributions made to security holders).

[12] Items 7 (premiums), 8 (death benefits and cash values), 9 (surrenders and withdrawals), and 10 (loans).

[13] Rule 421(d) under the Securities Act [17 CFR 230.421(d)].

The adoption of Form N–6 is the latest Commission action reflecting our long-standing commitment to improve the quality of disclosure available to investment company investors. During the 1980s, the Commission introduced the innovative two-part disclosure format for mutual funds and variable annuities and adopted uniform fee tables for mutual funds and variable annuities. [14] We have taken significant steps in the past few years, including the comprehensive revision of Form N–1A, the mutual fund disclosure form, to provide a standardized risk/return summary at the beginning of every mutual fund prospectus, require mutual funds to prepare disclosure documents using plain English, and eliminate prospectus clutter that obscures information that is helpful to investors making an investment decision.[15] Last year, we adopted amendments to our rules and forms to improve the disclosure that mutual funds provide about their independent directors and to require mutual funds to disclose after-tax returns.[16]

Form N–6 is designed to promote more effective communication of information about variable life insurance policies. Today's adoption of Form N–6 represents a significant step toward our goal of better, clearer, more concise disclosure for all investors.

II. Discussion

We discuss below the significant comments that we received on proposed Form N–6 and the Items that we have modified in response to comments.

A. Part A—Information in the Prospectus

1. Risk/Benefit Summary: Benefits and Risks (Item 2)

We are adopting, with modifications, the requirement that a risk/benefit summary be included at the beginning of every prospectus. The risk/benefit summary will provide key information about a policy, including its risks and benefits, and is intended to respond to investors' strong preference for summary information in a standardized format.[17] It is designed to assist investors in evaluating and comparing variable life insurance policies by providing them with key information about a policy in a standardized, easily accessible place. Commenters generally supported inclusion of the risk/benefit summary in the prospectus with suggested modifications, several of which we are adopting today.

As proposed, the risk/benefit summary would have been required to contain specified information in a required order and would not have been permitted to contain additional information.[18] Some commenters expressed the view that providing registrants greater flexibility in describing policy features would result in more useful and understandable disclosure. We agree and have modified the proposed requirement to permit the inclusion of additional information and to eliminate the ordering requirements of Item 2. As adopted, Item 2 requires a concise, plain English description of the policy, including the benefits and principal risks.

We have eliminated the proposed requirement to disclose that part of the policy premium is allocated to insurance coverage, part of the premium is invested, and part of the premium is used to pay sales loads and other charges.[19] Commenters noted that this disclosure may be inaccurate in some cases, *e.g.,* charges may be deducted from cash value rather than premium payments. We agree. In addition, we believe that this disclosure is unnecessary because the investment and cost aspects of the policy are adequately covered elsewhere in the prospectus.[20]

One commenter recommended that registrants be required to discuss the risk of replacing one policy with another, which may include substantial deferred sales charges on the surrendered policy, an additional medical examination, and higher insurance charges. Item 2, as proposed and adopted, requires disclosure that variable life insurance policies are unsuitable as short-term savings vehicles, and we would expect this disclosure to include a discussion of the adverse consequences of early

[14] Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772] (''N–4 Fee Table Adopting Release''); Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] (''N–1A Fee Table Adopting Release''); N–4 Adopting Release, *supra* note 8; 1983 N–1A Adopting Release, *supra* note.

[15] 1998 N–1A Adopting Release, *supra* note 8.

[16] Investment Company Act Release No. 24816 (January 2, 2001) [66 FR 3734], correction [66 FR 13234]; Investment Company Act Release No. 24832 (January 18, 2001) [66 FR 9002] (''After-Tax Returns Adopting Release'').

[17] For example, in connection with an initiative to permit mutual funds to use profiles summarizing key information, many individual investors wrote to the Commission about the need for concise, summary information relating to a fund. *See* Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968, 13969] (discussing individual investors' strong support for the Commission's fund profile proposal).

[18] Form N–6 Proposing Release, *supra* note 9, 63 FR at 14008–09.

[19] *Id.* at 14009.

[20] *See, e.g.,* Item 3 and Item 7(f).

surrender, such as the payment of deferred sales charges. We have, however, determined not to require a separate discussion of replacement risks because the risks of a replacement transaction, including the risk that a replacement may be unsuitable, are not risks of a particular policy, and we believe that the prospectus should focus on the policy itself.

We are concerned, however, that replacement transactions associated with variable life insurance policies may not, in all cases, be in the best interests of investors. These transactions create a potential for sales practice abuses, through which contract owners may be induced to make disadvantageous exchanges that result in the payment of additional sales charges and broker compensation. [21] We note that replacement transactions involving variable insurance products have been the object of increasing regulatory scrutiny in recent years.[22] We remind broker-dealers of their obligation to recommend replacement transactions only when they are suitable.[23] We also urge life insurance companies to monitor replacement activity with respect to their policies on an ongoing basis.

Proposed Form N–6 contemplated that risks associated with Portfolio Companies would be addressed in the Portfolio Companies' prospectuses, not the variable life insurance prospectus. Policies frequently offer numerous Portfolio Companies as investment options, and the Commission continues to believe that a variable life insurance prospectus may become too long and complex if it includes risk information specific to each Portfolio Company. As a result, investors are better served by consulting the Portfolio Company prospectus for risk information relating to the particular Portfolio Companies in which they are interested. At the suggestion of commenters, however, we have modified Item 2 to expressly permit the inclusion of information about the Portfolio Companies.[24] Whether or not a registrant elects to include information about the Portfolio Companies, Item 2 will require a statement to the effect that a comprehensive discussion of the risks of each Portfolio Company may be found in the Portfolio Company's prospectus.

We have added an instruction to make it clear that if the risk/benefit summary includes information that responds to the requirements of other form items, the information need not be repeated elsewhere in the Prospectus.[25] This could, for example, permit a registrant that includes information about the Portfolio Companies in the risk/benefit summary to modify or omit discussion of the Portfolio Companies in the body of the prospectus.

As these modifications to proposed Form N–6 suggest, we believe that it is appropriate to accord registrants broad flexibility to include a narrative summary that is most useful to their investors. We are, however, concerned that this flexibility would permit a registrant to include excessively detailed information in the summary, with the result that other important information that is not required by Item 2, particularly the fee table required by Item 3, would not be prominently located in the prospectus. In order to provide registrants broad flexibility to design the narrative summary, while ensuring that policy costs will receive the prominence they deserve, we have modified proposed Form N–6 to require that the fee table must precede the information required by Item 2 if the information provided in response to Item 2 exceeds five pages in length.[26]

2. Risk/Benefit Summary: Fee Table (Item 3)

Fee Table Required

We are adopting, substantially as proposed, the requirement that a variable life insurance prospectus include a fee table immediately following the summary of risks and benefits required by Item 2.[27] For the first time, variable life insurance prospectuses will include a fee table similar to those long required for both mutual funds and variable annuities.[28] Our goal is to promote, to the greatest extent possible, uniformity, simplicity, and comparability in fee disclosure.

Commenters were divided in their views on the requirement to include a tabular presentation of fees and charges at the beginning of all variable life insurance policy prospectuses. Commenters that supported the fee table noted that it would facilitate comparisons among variable life insurance policies and bring variable life insurance fee disclosure into general parity with variable annuities and mutual funds. Commenters that objected to the requirement asserted that the proposed fee table would not provide useful disclosure for a prospective investor seeking to evaluate a variable life insurance policy or to compare several variable life insurance policies because of the complexity of variable life insurance fees and charges. These commenters recommended alternatives that would permit issuers to provide disclosure of fees and charges in a format of their choosing, which could include tabular presentations, flow charts, and narrative descriptions.

As outlined in the Proposing Release, we agree with commenters that the fees and charges associated with variable life insurance policies often are quite complex for several reasons. First, the structure of fees often differs from one policy to another, making comparisons among products difficult. Second, fees typically are imposed at several levels within a variable life insurance policy, making it difficult to assess the aggregate effect of charges. For example, management and other expenses may be deducted at the Portfolio Company level, asset-based charges such as a mortality and expense risk charge may be deducted against separate account assets, and other charges, such as cost of insurance, may be assessed against a policyholder's individual cash value. Third, some variable life charges, particularly cost of insurance (*i.e.*, the charge imposed for death benefit coverage), vary based upon the individual characteristics of the purchaser and change over the life of a policy. The complexity of variable life insurance fees and charges makes it more difficult to prescribe a

[21] *Cf.* NASD Notice to Members 00–44, *The NASD Reminds Members Of Their Responsibilities Regarding The Sale of Variable Life Insurance* (July 2000) (discussing need for NASD member firms to adopt procedures to ensure that replacement recommendations involving variable life insurance policies are suitable).

[22] *See In the Matter of Raymond A. Parkins, Jr.,* Admin. Proc. File No. 3–10300, Investment Advisers Act Release No. 2010 (Jan. 18, 2002) (Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order) (finding that investment adviser fraudulently switched clients' variable annuity investments, and barring adviser from association with any broker, dealer, or investment adviser for two years); Press Release, *NASD Regulation Fines Pruco Securities $20 Million* (Jul. 8, 1999) (announcing action against broker/dealer in connection with the offer and sale of variable life insurance policies, including misrepresentations in connection with the purchase of new variable life insurance policies by existing customers) <*www.nasdr.com/news/pr1999/ne_section99_170.html*> (visited Jan. 24, 2002); Letter from Susan Nash, Associate Director, Division of Investment Management, SEC, to W. Thomas Conner, National Association for Variable Annuities, Carl B. Wilkerson, American Council of Life Insurers, and Paul J. Mason, Insurance Marketplace Standards Association (June 19, 2001) <*www.sec.gov/divisions/investment/guidance/nash061901.htm*> (emphasizing Commission staff's concern with abusive switching of variable annuity contracts).

[23] *See, e.g.,* NASD Conduct Rule 2310 (Recommendations to Customers (Suitability)).

[24] Instruction to Item 2.

[25] General Instruction C.3.(a).

[26] General Instruction C.3.(a) & C.3.(c)(ii).

[27] Item 3.

[28] Item 3 of Form N–1A; N–1A Fee Table Adopting Release, *supra* note 14; Item 3 of Form N–4; N–4 Fee Table Adopting Release, *supra* note 14.

standardized disclosure format than for mutual funds or variable annuities.

We continue to believe, however, that the complexity of variable life insurance fees and charges makes it particularly important that investors receive clear, understandable disclosure about this essential aspect of the investment decision. As we noted in the Proposing Release, the importance of this disclosure has been heightened since the passage of the National Securities Markets Improvement Act of 1996 (''NSMIA''). NSMIA amended Sections 26 and 27 of the Investment Company Act to replace specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[29] The increased flexibility to structure variable life insurance charges given to insurers by NSMIA increases the need for clear, understandable disclosure of charges.[30]

Although we acknowledge the complexities associated with designing a fee table for variable life insurance, we agree with those commenters who believe that it will facilitate comparison among variable life insurance policies.[31] As we noted in the Proposing Release, in recent years, the Commission has observed that a number of variable life insurance registrants, on their own initiative, have added relatively simple, tabular presentations of fees and charges to their prospectuses, including fee tables that conform generally to the format we proposed. The Commission believes that these registrants' efforts represent a significant step towards enhanced communication with investors about fees and charges and that it is appropriate, at this time, to extend these efforts to the industry as a whole, by requiring variable life insurance prospectuses to include a fee table.

Fee Table Format

The fee table consists of three separate sections. The first section shows policyholder transaction fees, such as sales loads, surrender charges, and transfer fees. The second section shows annual charges, excluding annual Portfolio Company operating expenses. The third section shows annual Portfolio Company operating expenses, including management fees, distribution fees, and other expenses.

We are modifying the proposed four-column format that would have required a registrant to identify each charge, when the charge is deducted, the amount of the charge, and whether the charge is deducted from all policies or only certain policies. Commenters generally questioned the need for the fourth column, identifying whether the charge is deducted from all policies or only certain policies. We agree, and the fee table, as adopted, does not include this column. Registrants that desire to indicate that a charge is not applicable to all policies may do so through footnotes to the fee table or some similar means.

We are also changing the format of the Portfolio Company operating expenses section of the fee table in response to commenters' suggestions, so that the presentation of Portfolio Company fees and expenses will more closely resemble the presentations required by Forms N–1A and N–4. Under proposed Form N–6, Portfolio Company operating expenses would have been disclosed in a format similar to that prescribed for charges assessed by an insurer under the terms of a variable life insurance policy. We agree with a commenter who argued that the use of this format would tend to obscure the important differences between Portfolio Company charges and charges assessed under a variable life insurance policy, such as the fact that Portfolio Company expenses are not contractual and may vary from year to year. The Commission believes that the format used for mutual fund expenses in Forms N–1A and N–4 has provided uniformity, simplicity, and comparability in fund fee disclosure, and that presentation of Portfolio Company expenses in this format in Form N–6 will facilitate understanding of Portfolio Company expenses.[32]

Requirement To Disclose All Fees and Charges

We are adopting, as proposed, the requirement that registrants disclose all fees and charges, whether or not a specific caption is provided for a charge in the fee table.[33] A number of commenters objected to the proposal to require disclosure of all fees and charges, particularly charges for riders, in the fee table. These commenters noted that rider charges generally apply to a limited number of policyholders, are not considered significant features of a policy, and could dominate a fee table and detract from the information about the base policy. Some commenters recommended instead that the Commission limit the disclosure required in the fee table to fees and charges that are relevant to most policies or that may be charged to a typical investor.

We share commenters' concern that investors not be overwhelmed by information of limited relevance. At the same time, however, we do not believe that it is feasible to distinguish between charges for optional features that ought to be included in the fee table because they are expected to be selected by most or a majority of investors, or by ''typical'' investors, and charges for optional features that are expected to be less popular and hence should be omitted from the fee table. We note that in recent years insurers have increasingly offered variable insurance products with a variety of so-called ''unbundled'' optional features, each of which has a specific charge.[34] Insurers maintain that these ''unbundled'' products are advantageous for investors because they allow investors to elect and pay for only those features that they want.[35] However, this trend toward unbundling of features and charges would make the task of separating out those optional features that will be selected by a ''typical'' investor much more difficult. Consequently, we are adopting the requirement as proposed. We note, however, that a registrant may

[29] 15 U.S.C. 80a–26; 15 U.S.C. 80a–27; National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), Section 205; S. Rep. No. 293, 104th Cong., 2d Sess. 22 (1996); H. Rep. No. 622, 104th Cong., 2d Sess. 45–46 (1996); Division of Investment Management, SEC, Protecting Investors: A Half-Century of Investment Company Regulation, at 386–90 (1992) (describing pre-NSMIA regulation of variable life insurance policy charges).

[30] In addition, in light of NSMIA, the National Association of Securities Dealers, Inc. (''NASD'') amended its Conduct Rules to eliminate the maximum sales charge limitations applicable to variable insurance contracts. Securities Exchange Act Release No. 42043 (Oct. 20, 1999) [64 FR 58112 (Oct. 28, 1999)] (order approving File No. SR–NASD–98–14).

[31] We note that the Commission's plain English rule encourages use of tabular presentations for complex material whenever possible. 17 CFR 230.421(d).

[32] *See* 1997 N–1A Proposing Release, *supra* note 8, 62 FR at 10907 (discussing role of Form N–1A fee table).

[33] Instruction 2.(c) to Item 3; Instruction 3.(e) to Item 3.

[34] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity,* National Underwriter Life & Health/Financial Services Edition, Sept. 3, 2001, at 22 (describing growth in optional riders on both variable annuities and variable life insurance); Linda Koco, *Shaping Up the Next-Gen VULs,* National Underwriter-Life & Health/Financial Services Edition, Jan. 1, 2001, at 20 (insurance company executive quoted as characterizing the variable universal life business as moving toward flexibility and unbundling).

[35] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity, supra* note 34 (arguing that optional riders facilitate policyholder choice).

readily ensure that disclosure of rider charges does not overwhelm disclosure of base contract charges by, for example, disclosing rider charges at the end of the second section of the fee table, under a caption that indicates that the charges are for optional features.

Cost of Insurance

We are modifying the proposed requirement that registrants disclose in the fee table the minimum and maximum cost of insurance charges that may be imposed under a variable life insurance policy.[36] Cost of insurance generally is a significant expense item for variable life insurance policyholders.[37] For that reason, the Commission believes that it is important for investors to receive information about the level of this charge. The Commission also recognizes, however, that this charge varies from policyholder to policyholder, based on individual characteristics such as age, gender, and risk classification, so that the charge does not readily lend itself to quantification in a table that applies to all policyholders.

Commenters uniformly opposed the proposed requirement to disclose a range of the cost of insurance charge, arguing that this approach would result in the presentation of numbers that would have little relevance to many investors. Commenters, however, were far from uniform in their recommendations to address this issue. Some commenters suggested that the Commission require separate cost of insurance tables that disclose a range of cost of insurance rates for various issue ages, rate classes, genders, and policy years, noting that the added complexity of a more detailed presentation is outweighed by the benefit of more precise information about this charge which often represents the largest cost of a policy. Another commenter recommended disclosure of the cost of insurance charge for a policyholder with characteristics that are fairly representative of purchasers of a policy, which we had identified in the Proposing Release as a possible alternative approach to disclosure of cost of insurance.[38] Other commenters preferred a requirement to provide narrative disclosure about the cost of insurance, such as disclosure of the factors that affect the cost of insurance charge and how the cost of insurance charge increases over the life of the policy.

We continue to believe that fee table disclosure of the cost of insurance can serve as a flag to prospective investors that this is a significant charge which bears further investigation. We are also persuaded that disclosure of the range of cost of insurance will more effectively demonstrate the significance of this charge if it is coupled with disclosure of the cost of insurance paid by a hypothetical representative policyholder. While the cost of insurance that will be paid by a prospective investor will likely differ from that shown for the representative policyholder, disclosure of the cost of insurance for the representative policyholder, together with disclosure of the minimum and maximum cost of insurance, should give prospective investors a general understanding of the range of cost of insurance charges. Therefore, we are requiring that registrants include in the fee table the cost of insurance charge that would be paid by a purchaser of the policy with characteristics (*e.g.,* sex, age, and rating classification) that are fairly representative of actual or expected purchasers of the policy, in addition to the minimum and maximum charges that may be imposed.[39] The requirements for the characteristics of the representative policyholder would be similar to the requirements for the characteristics of policyholders used in hypothetical illustrations, and the registrant would be required to describe these characteristics in a sub-caption for the charge.[40] To further address commenters' concerns that the specific numerical cost of insurance information in the fee table would have limited relevance to any particular investor, we are also requiring narrative disclosure (i) that the cost of insurance varies based on individual characteristics; (ii) that the cost of insurance charge or other charge shown in the table may not be representative of the charge that a particular policyholder will pay; and (iii) how a policyholder may obtain more information about the particular cost of insurance or other charges that would apply to him or her.

Further, we are permitting registrants to supplement this disclosure of the range of cost of insurance and the cost of insurance for a representative policyholder with additional disclosure concerning the cost of insurance, immediately following the fee table.[41] This disclosure might include, for example, an explanation of the factors that affect the cost of insurance or tables showing the cost of insurance for a spectrum of representative policyholders. Permitting this additional disclosure responds to commenters' concerns that simple numerical disclosure in the fee table may not be adequate to explain the cost of insurance to investors. Allowing additional disclosure will also permit registrants to experiment with different approaches, which may, over time, assist us in developing a better approach to disclosure of cost of insurance charges.

Requirement To Disclose Maximum Charges

The proposed fee table would have required disclosure of the maximum guaranteed charge for each item unless a specific instruction directs otherwise (*e.g.,* cost of insurance). Commenters that expressed views on this requirement recommended that the form permit registrants to disclose current charges along with the guaranteed charges, arguing that placing current charge information in a footnote will not adequately disclose variations between current and guaranteed charges and that disclosing only the guaranteed charge may significantly overstate the amount of a charge.

To address commenters' concerns, the Commission has revised Item 3 to permit, but not require, registrants to disclose current charges in the fee table so long as the current charge disclosure is no more prominent than, and does not obscure or impede understanding of, the required maximum guaranteed charge disclosure. [42]

Captions in the Fee Table

We are making some technical changes to address commenters' concerns regarding the fee table captions. We are modifying the Instructions to the fee table to allow a registrant to modify or add captions if the captions shown do not provide an accurate description of its fees and expenses.[43] This modification recognizes that, following the enactment of NSMIA, insurers have increased flexibility to structure variable life insurance charges, subject to a

[36] Instruction 3.(b) to Item 3.

[37] *See* Roger L. Blease, *Costs Count: A Best's Policy Reports Survey Examines the Costs Incurred with the Life Insurance Portion of Variable Universal Life Policies,* Best's Review—Life-Health Insurance Edition, Jan. 1997, at 37.

[38] Form N–6 Proposing Release, *supra* note 9, 63 FR at 13993.

[39] Instruction 3.(b) to Item 3. This approach also applies to other charges that depend on individual policyholder characteristics. *Id.*

[40] Instruction 3.(b)(i) to Item 3. *Cf.* Item 26(c) and (d) (specifying requirements for premium amounts, ages, and rating classifications to be used in hypothetical illustrations).

[41] Instruction 3.(b)(ii) to Item 3.

[42] Instruction 1.(f) to Item 3.

[43] Instruction 1.(c) to Item 3.

requirement that those charges be reasonable in the aggregate.[44]

The Commission also has revised Item 3 to require the heading ''Periodic Charges'' instead of ''Annual Charges'' at the beginning of the second section of the fee table. This reflects the fact that some charges under variable life insurance policies may be assessed at intervals other than annually (*e.g.,* a monthly deduction for the cost of insurance charge).

Portfolio Company Fees and Charges

We are adopting, as proposed, the requirement that, for a registrant that offers multiple Portfolio Companies, the fee table require disclosure of the range of expenses for all of the Portfolio Companies.[45] Commenters were divided regarding how Portfolio Company expenses should be disclosed. Some commenters recommended that Form N–6 require registrants to include a complete presentation of the fees and charges for each Portfolio Company. Other commenters either supported the Commission's proposal to require disclosure of the range of the expenses for all of the Portfolio Companies or recommended that the Commission permit issuers to determine how to disclose Portfolio Company expenses.

As we stated in the Proposing Release, we are concerned that, because variable life fees and charges are complex, and because policies frequently offer numerous Portfolio Companies as investment options, investors could be overwhelmed by information if the fees and charges for each Portfolio Company were required to be separately stated in the fee table. For this reason, we have determined not to require a complete presentation of the fees and charges for each Portfolio Company. To address the concerns of some commenters, however, that the particular fees and charges of a specific Portfolio Company are more important to investors than the range of fees and charges for all Portfolio Companies, we are permitting, but not requiring, registrants to include disclosure of the fees and expenses for each Portfolio Company, in addition to the disclosure of the range of expenses for the Portfolio Companies.[46] This will provide registrants the flexibility to include this detailed information when they determine that it would be helpful, and not overwhelming, to investors.

In addition, we are revising Form N–1A to require the prospectus of a mutual fund that offers its shares as investment options for variable insurance products to include a fee table.[47] The fee table in Form N–6 contains a statement referring investors to the Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. This will ensure that investors in variable life insurance policies have access to complete information about Portfolio Company fees and expenses.

We are also adopting, as proposed, the requirement that Portfolio Company operating expenses be disclosed before expense reimbursement and fee waiver arrangements. Expenses after reimbursement or waiver could be disclosed in a footnote. This approach is consistent with Form N–1A.[48]

We have deleted the instruction to the Portfolio Company expenses section of the fee table that would have required separate disclosure of the portion of ''Other Expenses'' that represents distribution or similar expenses deducted from a Portfolio Company's assets other than pursuant to a rule 12b–1 plan.[49] This disclosure will be found in the prospectus for any Portfolio Company that deducts expenses of this nature, and we do not believe that disclosure of the range of such expenses for all Portfolio Companies will be particularly meaningful.

3. General Description of Registrant, Depositor, and Portfolio Companies (Item 4)

We are adopting, as proposed, Item 4, which requires a concise discussion of the organization and operation of the registrant, including a discussion of the rights of policyholders to instruct the insurance company depositor on the voting of Portfolio Company shares. One commenter recommended, consistent with proposed Item 4, that a brief discussion of voting rights be included in the prospectus, with more technical aspects disclosed in the SAI. Another commenter suggested that all information about voting rights be included in the SAI, consistent with the approach of Form N–1A for mutual funds.[50] We have decided to retain the requirement that the variable life insurance prospectus concisely discuss policyholders' rights with respect to voting Portfolio Company shares. Unlike an investor in a mutual fund, the owner of a variable life insurance policy does not hold legal title to the shares of the underlying Portfolio Companies and a policyholder's rights to vote on matters affecting the Portfolio Companies are less obvious than the rights of mutual fund investors.

4. Charges (Item 5)

We are adopting Item 5, which requires registrants to describe briefly all charges deducted from premiums, cash value, assets of the registrant, or any other source, with technical modifications to address commenters' concerns. As proposed, Item 5(a) would have required registrants to explain what is provided in consideration for each charge. We have revised Item 5 to require an explanation of what is provided in consideration for ''the charges,'' rather than ''each charge.'' Where multiple charges are used as a combined pool of resources, a registrant may describe what is provided in consideration for the charges as a group. However, where it is possible to identify what is provided in consideration for a particular charge, this should be separately explained (*e.g.*, use of sales load to pay distribution costs of the policy or use of the cost of insurance charge to pay for insurance coverage).

We have also revised the language of Instruction 2 to Item 5(a) to avoid confusion between the cost of insurance *rate,* and the cost of insurance *charge,* which is the cost of insurance rate times the net amount at risk. In addition, we have clarified that disclosure regarding increased cost of insurance rates for healthy individuals attributable to simplified underwriting is required only when simplified underwriting would cause healthy individuals to pay higher cost of insurance rates than they would pay under a substantially similar policy that is offered by the insurer using different underwriting methods.

We have eliminated proposed Item 5(d), which would have required a

[44] *See supra* Section II.A.2., ''Fee Table Required'' (discussing elimination of limits on variable life insurance charges by NSMIA).

[45] Instruction 4.(b) to Item 3.

[46] Instruction 4.(h) to Item 3.

[47] *See* Section II.E. *infra,* ''Adoption of Amendment to Form N–1A.''

[48] Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to add two lines to the fee table: one line showing the amount of the reimbursement or waiver, and a second line showing the fund's net expenses after subtracting the reimbursement or waiver from the total fund operating expenses. *See* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998). We intend that the staff construe the fee table requirements of Form N–6 consistent with the approach taken under Form N–1A, to permit the addition of one line to the fee table showing the range of net total Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses. This additional line should be placed immediately under the ''Total Annual [Portfolio Company] Operating Expenses'' line of the fee table and should have an appropriate descriptive caption. A footnote to the fee table should describe the contractual arrangement.

[49] Form N–6 Proposing Release, *supra* note 9, 63 FR at 14010 (Proposed Instruction 4.(d) to Item 3).

[50] Item 17(a)(2)(iv) of Form N–1A.

description of the type of operating expenses for which the registrant is responsible, and, if the organizational expenses of the registrant are to be paid out of its assets, an explanation of how the expenses will be amortized and the period of amortization.[51] We agree with commenters who argued that information about expenses paid out of separate account assets would be reflected in the fee table, and that additional disclosure about these specific categories of expenses would not be useful to investors. In addition, we note that organizational expenses may no longer be amortized in any event, but must be expensed as incurred.[52]

5. Taxes (Item 12)

We are adopting, as proposed, the requirement that registrants describe the material tax consequences to the policyholder and beneficiary of buying, holding, exchanging, or exercising rights under the policy. Registrants are required to discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the policy, as well as tax benefits accorded the policy.

Two commenters expressed the view that tax disclosure in the prospectus should be brief, with more extensive, technical disclosure located in the SAI. We believe that the requirements we are adopting will focus prospectus disclosure on the likely tax consequences to policyholders of purchasing a variable life insurance policy. Our intent, as we stated in the Proposing Release, is to elicit disclosure that is not overly lengthy or technical and that does not use jargon that is difficult for the average or typical investor to understand. The Commission notes its strong desire that, in revising their prospectuses to comply with Form N–6, variable life insurance registrants pay particular attention to their existing tax disclosures to ensure that these disclosures do not discourage the use of variable life insurance prospectuses.

[51] *Cf.* Instruction 2(f) to Item 6 of Form N–4 (requiring description of the type of operating expenses for which the registrant is responsible, and, if the organizational expenses of the registrant are to be paid out of its assets, an explanation of how the expenses will be amortized and the period over which the amortization will occur).

[52] *See* American Institute of Certified Public Accountants' Accounting Standards Executive Committee, Statement of Position 98–5, ''Reporting Costs of Start-up Activities,'' Apr. 1998 (requiring all start-up costs and organizational costs to be expensed as incurred).

B. Part B—Statement of Additional Information

1. Financial Statements (Item 24)

Location of Financial Statements

We are adopting the financial statement requirements of proposed Form N–6, which were generally supported by commenters and are similar to those of Form N–4, substantially as proposed. A variable life insurance prospectus will not be required to include the financial statements of either the registrant or the insurance company depositor. [53] The full financial statements of the registrant will be in the SAI, which will be available to investors upon request, free of charge. The SAI will also contain comparative balance sheets for the last two fiscal years for the depositor and, in certain cases, a more current interim balance sheet for the depositor. We are requiring that the other financial statements of the depositor (*e.g.,* statements of income and statements of changes in stockholders' equity) be included in the registration statement, but they may be included in Part C rather than the SAI. We are requiring that these financial statements also be made available to investors upon request, free of charge.

Form N–6 would permit issuers to incorporate by reference into the SAI the required financial statements of the registrant and the depositor, subject to the rules of the Commission on incorporation by reference.[54] The financial statements would have to be delivered with the SAI in this case.[55] Two commenters suggested changes to Form N–6 that would require financial statements to be delivered to an investor only if the investor requested an SAI and not if the SAI was delivered for other reasons. These commenters noted that one state requires an SAI to be delivered to any applicant for a variable life insurance policy, and that this state requirement would result in high printing costs for variable life insurance policies sold in that state.

The Commission has determined to retain the requirements as proposed. The financial statements of the registrant may be useful to many investors and should be included in the SAI directly or by incorporation by reference. Further, the financial condition of the depositor is relevant to its ability to pay the insurance benefits offered under variable life insurance policies, and therefore many investors may find financial information about the depositor useful. The proposed approach to depositor financial information, which requires that the SAI contain only the depositor's balance sheets, will allow a shorter SAI than would be the case if complete financial statements of the depositor were required, while still providing investors with significant information about the financial condition of the depositor in the SAI. We are not persuaded that we should condition delivery of the financial statements, which are an integral part of the SAI, upon whether an investor has requested the SAI solely in order to alleviate the burden of state requirements.[56]

Preparation of Depositor Financial Statements in Accordance With GAAP

We are revising Instruction 1 to Item 24(b) to clarify when a depositor's financial statements must be prepared in accordance with generally accepted accounting principles in the United States (''GAAP'') and when they may be prepared in accordance with statutory requirements.[57] As adopted, Instruction 1 to Item 24(b), like Instruction 1 to Item 23(b) of Form N–4, would provide that a depositor's financial statements may be prepared in accordance with statutory requirements if the depositor would not have to prepare financial statements in accordance with GAAP except for use in a registration statement filed on Forms N–3, N–4, or N–6. Instruction 1 includes a sentence not

[53] Item 14. If all of the required financial statements of the registrant and the depositor are not in the prospectus, Item 14 requires the prospectus to state where the financial statements may be found, and to briefly explain how investors may obtain any financial statements not in the SAI.

[54] General Instruction D.1.(c).

[55] Instruction to Item 15(a)(3)(C).

[56] *Cf.* Instruction to Item 10(a)(2)(iii) of Form N–1A (requiring that any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report); General Instruction G to Form N–4 (SAI must be available to investor upon request at no charge, and any information or documents incorporated by reference into the SAI must be provided along with the SAI).

[57] GAAP is an accounting term that encompasses the conventions, rules, and practices that define accepted accounting at a particular time issued by various authoritative bodies including the Financial Accounting Standards Board (''FASB'') and the American Institute of Certified Public Accountants (''AICPA''). *See* Codification of Financial Reporting Policies of the SEC, Section 101. Financial statements prepared in accordance with statutory requirements, which may vary from state to state, differ from those prepared in accordance with GAAP. Statutory requirements are the basis of accounting that insurance companies use to comply with the financial reporting requirements of state insurance regulations. Regulation S–X permits financial statements for mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies to be prepared in accordance with statutory requirements, except when the applicable registration forms specifically provide otherwise. 17 CFR 210.1–01(a); 17 CFR 210.7–02(b).

included in Form N–4, clarifying that the depositor's financial statements must be prepared in accordance with GAAP if the depositor prepares financial information in accordance with GAAP for use by its parent in consolidated financial statements in reports under the Securities Exchange Act of 1934 (''Exchange Act'') or registration statements.[58] This sentence is consistent with the manner in which the Commission staff has construed the existing instructions to Form N–4.

Ideally, all financial statements for depositors of variable life insurance policies would be presented on a GAAP basis because this would promote uniformity and consistency of presentation. We believe, however, that our approach appropriately recognizes the cost burdens that would be imposed if we required GAAP financial statements in cases where the depositor is not otherwise required to prepare financial information in accordance with GAAP for use in its own registration statements or periodic reports or those of its parent company. One commenter expressed concern that proposed Form N–6 could require a depositor to include financial statements in accordance with GAAP if the depositor prepared GAAP financial statements solely for internal purposes, for example, in a case where a mutual insurer desires to use GAAP financial statements internally for several years before switching to GAAP financial statements in its public filings. We wish to clarify that Form N–6 would not require the use of GAAP when a depositor prepares GAAP financial statements solely for internal purposes.

2. Performance Data (Item 25)

The Commission is adopting, as proposed, the requirements that the SAI include (i) an explanation of how the registrant calculates performance data used in advertising, including how charges are reflected in the data, and (ii) a quotation of performance for each sub-account for which performance data is advertised. In addition, as proposed, Form N–6 will neither require disclosure of any historical performance information nor prohibit the presentation of historical performance information in a variable life insurance prospectus, provided that the information is not incomplete, inaccurate, or misleading and does not obscure or impede understanding of the information that is required to be included.[59]

Variable life insurance performance is difficult to measure because of the complexity of the product and because policy charges and values are linked to individual characteristics of a particular investor. In addition, variable life policies provide cash value and death benefits, and both of these may be affected over time, in different ways, by policy charges and earnings. The Proposing Release identified the following three types of performance information that are sometimes included in variable life insurance registration statements.

- *Portfolio Company performance.* This measure is net of investment management fees and other Portfolio Company fees and expenses, but is not adjusted for fees and expenses imposed on the separate account or individual policyholders.
- *Portfolio Company performance adjusted for separate account asset-based charges.* This is a hybrid measure that is net of investment management fees, other Portfolio Company fees and expenses, and separate account asset-based charges, but is not adjusted for charges imposed on individual policyholders.
- *Illustrations of cash values and death benefits.* These illustrations are based on actual investment performance of a Portfolio Company and specified assumptions about premiums and the insured individual (*e.g.,* sex, age, rating classification), reflecting all of the fees and charges at the Portfolio Company, separate account, and individual policyholder levels.

Form N–6 does not require disclosure of any historical performance information. We believe, as we stated in the Proposing Release, that, at the present time, no method of measuring variable life insurance performance has been devised that is useful enough that its disclosure should be required. Commenters supported this approach. Commenters differed on whether the Commission should restrict the forms of performance information permitted in a variable life insurance prospectus. Several commenters stated that all of the categories of performance information discussed in the Proposing Release may have informational value to investors and should be permitted in the prospectus, provided that the limitations of the method chosen are described. A few commenters expressed concerns about the presentation of Portfolio Company performance or Portfolio Company performance adjusted for separate account asset-based charges. The commenters who were concerned about Portfolio Company performance argued that it does not reflect the return a policyholder might receive as accurately as would measures that reflect separate account charges. In contrast, a commenter who expressed concern about Portfolio Company performance adjusted for separate account asset-based charges stated that this measure of performance, unlike Portfolio Company performance, has no useful meaning but can mislead and cause misunderstanding because it reflects some, but not all, policy charges.

After considering these comments, the Commission has determined not to prohibit the use of any type of performance information in the separate account prospectus. We agree with the commenters who argued that all of the categories of performance information discussed in the Proposing Release may provide useful information to investors. We emphasize, however, that registrants are responsible for ensuring that any presentation of performance information is not incomplete, inaccurate, or misleading and does not obscure or impede understanding of the information that is required to be included in the prospectus. For example, a separate account using performance information that does not reflect all charges that a policyholder would incur, directly or indirectly, should include sufficient information about the omitted charges to ensure that the performance presentation is not misleading. In addition, as we indicated in the Proposing Release, we believe that Portfolio Company performance information is most appropriately included in the Portfolio Company's prospectus, where it can be considered along with the risks of investing in the Portfolio Company. Registrants should bear this in mind when determining whether it is appropriate to include Portfolio Company performance in the prospectus for the separate account.

3. Illustrations (Item 26)

Permitted Use of Hypothetical Illustrations

Commenters supported the Commission's proposal to permit, but not require, registrants to include hypothetical illustrations of a variable life insurance policy in either the prospectus or the SAI, and we are adopting the proposal.[60] Hypothetical illustrations are tabular presentations of

[58] This requirement would also apply if the depositor provides financial information in accordance with GAAP to a parent that is a foreign private issuer for purposes of the parent's reconciliation to GAAP. *See* Items 17 and 18 of Form 20–F (describing requirements for reconciliation to GAAP).

[59] General Instruction C.3.(b).

[60] Item 26.

numbers that demonstrate how the cash value, cash surrender value, and death benefit under a policy change over time based on (i) assumed gross rates of return of the Portfolio Companies; and (ii) deduction of fees and charges for a hypothetical policyholder (*e.g.,* a 40-year-old, non-smoking male) with a specified policy face amount and premium payment pattern.

Requirements for Hypothetical Illustrations

The Commission proposed requirements for any hypothetical illustrations included in the prospectus or SAI, in order to place reasonable limits on the assumptions that may be used and discourage the presentation of misleading illustrations. We are adopting these requirements with modifications, as discussed below. We remind registrants that, in addition to complying with these requirements, registrants remain responsible for ensuring that illustrations are not incomplete, inaccurate, or misleading and do not, because of their nature, quantity, or manner of presentation, obscure or impede understanding of information required to be included in the prospectus or SAI.[61]

Narrative Information. We are clarifying the requirement that a clear and concise explanation of the illustrations precede the illustrations. Specifically, the explanation should include a description of the expenses reflected in the illustrations; a statement that the illustrations are based on assumptions about investment returns and policyholder characteristics; a description of the circumstances under which actual results for a particular policyholder would differ from the illustrations (*e.g.,* when policyholder characteristics, expenses, or investment returns differ from those illustrated); and whether personalized illustrations are available, and, if so, how they may be obtained.[62] We note, however, that this prescribed disclosure is not intended to be exclusive, and that registrants should include any additional disclosure concerning the assumptions and limitations of the hypothetical illustrations necessary to ensure that the hypothetical illustrations are not incomplete, inaccurate, or misleading.

Assumed Rates of Return. The Commission proposed to require registrants to use gross rates of return of 0% and one other rate not exceeding 10%. Additional gross rates of return not greater than 10% would have been permitted. As adopted, Form N–6 will require registrants to use gross rates of return of 0%, 6%, and one other rate not greater than 12%. Additional gross rates of return no greater than 12% may also be used.[63] This is consistent with current practice in variable life insurance prospectuses, which typically use gross rates of 0%, 6%, and 12% in illustrations.[64] We proposed to require registrants using illustrations to use only two rates of return because, as the number of rates increases, the potential for overwhelming investors with excessive quantitative information that is of limited relevance to their particular circumstances also increases. We proposed to cap permissible rates at 10% because of our concerns that rates above 10% may have a significant tendency to invite unrealistic investor expectations and that investors might give undue weight to a 12% illustration, when coupled with a 0% illustration, because they might discount a 0% illustration as unrealistically low.

A number of commenters recommended that Form N–6 require registrants using illustrations to use three rates of return, rather than two, arguing that the use of three rates more effectively demonstrates how variable life insurance policies operate and the effect that Portfolio Company returns have on cash values and death benefits. In addition, commenters generally recommended that the Commission permit illustrations with rates as high as 12%, arguing that 12% fairly depicts historical stock market returns.

We have modified our proposal to require registrants to use three gross rates of return—0%, 6%, and one other rate not greater than 12%. We agree with commenters that the use of three rates of return may effectively demonstrate how a variable life insurance policy operates. In addition, we are persuaded that illustrations using a 12% rate should not be prohibited, in light of historical stock market returns. Although historical returns on large company stocks have averaged 10.7% from 1926 to the present, returns for these stocks have exceeded 12% for many 5-, 10-, 15-, and 20-year periods.[65] As a result, illustrations at a 12% rate, when coupled with illustrations at 0% and 6% rates, may not be materially misleading. We note that each registrant should determine for itself whether the use of a 12% illustration is appropriate and not misleading under its particular facts and circumstances, such as the historical returns of the policy's Portfolio Companies and the actual and expected allocations by policyholders to various asset classes. We continue to believe, however, that investors might give undue weight to a 12% illustration, when coupled only with a 0% illustration, and we therefore believe that it is important to require the use of a third, intermediate rate.

Premium Amounts. Proposed Item 26(c) would have required that the premium amounts used in illustrations not be unduly larger or smaller than the actual or expected average policy size. We have modified the reference to ''policy size'' to clarify that we are referring to premium amount rather than policy face amount.[66]

We have also modified the language of this Item to address the concern of a commenter that averaging of premium amounts may result in a premium amount that is significantly different from the premium amount that is representative of the actual policies sold. We are providing that premium amounts used in illustrations be representative of the actual or expected ''typical'' premium amount, with flexibility to base the typical premium amount on the average or median premium amount or another reasonable basis that results in a typical premium amount that is fairly representative of actual or expected policy sales.

Rating Classification. We are also modifying proposed Item 26(d), which would have required that illustrations be shown for the rating classification (*e.g.,* nonsmoker, smoker, preferred, standard) with the greatest number of outstanding policies, to address a commenter's concern that this requirement may result in a rating

[61] General Instruction C.3.(b).

[62] Item 26(a). Disclosure about the availability of personalized illustrations would also be required on the back cover page of the prospectus. Item 1(b)(1).

[63] Item 26(g).

[64] In its comment letters on variable life insurance filings, the Commission staff has objected to rates of return greater than 12%. *See Pacific Mutual Life Insurance Company,* Division of Investment Management no-action letter (Aug. 31, 1990) (describing development of staff position regarding use of rates of return in excess of 12%). *See also* NASD Conduct Rules, ''Communications with the Public About Variable Life Insurance and Variable Annuities,'' IM–2210–2(b)(5)(A)(ii) (requiring variable life insurance illustrations used for advertising and sales literature to use a rate of 0% and any other rates not greater than 12%).

[65] The estimate that annual returns on large company stocks have averaged 10.7% from 1926 to 2001 was provided to the Commission staff by Ibbotson Associates, Inc. *See also* Ibbotson Associates, Stocks, Bonds, Bills and Inflation Yearbook 25, 27 (2001) (compound annual growth rate of 11.0% for index of S&P 500 total returns from 1926 to 2000, assuming no transaction costs, full reinvestment of dividends on stocks or coupons on bonds, and no taxes); *id.* at 42–49 (showing compound annual returns for large company stocks and other asset classes for 5-, 10-, 15-, and 20-year holding periods).

[66] Item 26(c).

classification being used that is not representative. For example, if a policy uses a large number of narrowly drawn rating classifications, the rating classification corresponding to the greatest number of outstanding policies may fall at one extreme of the range of rating classifications (*e.g.,* the rating classification for healthy 20-year-old non-smokers) and thus may not be representative for most purchasers. We are modifying the Item to provide that if use of the rating classification with the greatest number of outstanding policies is not fairly representative of policy sales, illustrations should be shown for a commonly used rating classification that is fairly representative of policy sales.

Portfolio Company Charges and Expenses. We are adopting as proposed the requirement that Portfolio Company management fees and other Portfolio Company charges and expenses be reflected using the arithmetic average of those charges and expenses for all available Portfolio Companies. The average would be based on Portfolio Company charges and expenses incurred during the most recent fiscal year or any materially greater amount expected to be incurred during the current fiscal year.[67] A number of commenters opposed the required use of an arithmetic average, arguing that a weighted average would better reflect the proportionate allocations that investors actually make in a particular product and would therefore serve as a better proxy for the Portfolio Company expenses that a prospective investor might actually pay. Four commenters recommended that Form N–6 permit the use of either a weighted or an arithmetic average of Portfolio Company expenses, and three commenters recommended that the form require the use of a weighted average.

We disagree with commenters who recommended that we permit the use of either an arithmetic or weighted average of Portfolio Company expenses. This approach would lead to inconsistency among illustrations, the opportunity for ''cherry-picking'' the method that is most favorable from time to time, and the need for complicated rules governing when a change in the selected method is permitted. While we believe that there is some merit to the argument that a weighted average may serve as a better proxy for the Portfolio Company expenses that a ''typical'' prospective investor might pay, we note that, for any particular investor, a weighted average is not necessarily representative of the expenses he or she will pay. In addition, computation of a weighted average is significantly more complicated than an arithmetic average, for example, requiring adjustments to the method to address new variable life insurance policies and the addition and removal of Portfolio Companies to or from an existing policy.

We wish to clarify, however, that although we are requiring the use of an arithmetic average of Portfolio Company fees and expenses in illustrations included in the prospectus and SAI, we would not object if personalized illustrations are provided to a particular investor based on a weighted average of the expenses of the Portfolio Companies in which the investor already invests or expects to invest, provided that the illustrations are not misleading. We believe that illustrations prepared in this manner may be significantly more useful to a particular investor than personalized illustrations using an arithmetic average of Portfolio Company expenses.

The proposed form would require that hypothetical illustrations reflect Portfolio Company charges and expenses without taking into account any fee waiver or expense reimbursement arrangements. Two commenters recommended that the form permit insurers to take into account fee waiver or expense reimbursement arrangements where the arrangements are binding either (1) for at least one year or until the next prospectus update, or (2) until the end of the current fiscal year. One of these commenters argued that as long as the arrangements are written commitments for at least one year or until the next prospectus update, they reflect the actual fees and expenses that policyholders would experience as investors in the Portfolio Companies, and therefore illustrations should be able to reflect these ''capped'' expenses. The other commenter recommended that whatever expenses are actually used in a particular variable life prospectus should be used for purposes of hypothetical illustrations.

We have retained the requirement that hypothetical illustrations be based on Portfolio Company expenses before fee waiver or expense reimbursement arrangements. This conforms to the fee table in Item 3, which requires disclosure of Portfolio Company expenses before expense reimbursement and fee waiver arrangements. However, we intend that the staff construe the requirements of Form N–6 governing hypothetical illustrations consistent with the approach it has taken with the expense example of Form N–1A, to permit illustrations to reflect Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses, but only for the period of the contractual limitation.[68]

Hypothetical Illustrations Based on Historical Rates of Return

The Commission requested comment on the use of hypothetical illustrations constructed using historical rates of return for the Portfolio Companies (''hypothetical historical illustrations'') rather than assumed rates of return. Some variable life insurance registrants have included these illustrations in their prospectuses, although this practice is not widespread. Proposed Form N–6 did not specifically address hypothetical historical illustrations, and we are not modifying Form N–6 in this regard.

Commenters' views were mixed. One commenter expressed concern about the use of actual historical performance to illustrate hypothetical future values and argued that, to the extent actual results are used, illustrations lose much of their hypothetical nature, despite any disclaimer to the contrary. Another commenter noted that using hypothetical historical illustrations in the prospectus would result in extremely long illustrations, adding to the complexity of the prospectus. Several other commenters argued that the Commission should permit the use of hypothetical historical illustrations in the prospectus and SAI by registrants who believe they contribute to investor understanding of a policy.

We continue to have a number of concerns about the use of hypothetical historical illustrations. While hypothetical illustrations that show a pattern of assumed returns, *e.g.*, 0%, 6%, and 12%, may help investors understand how different rates of return affect policy performance, historical rates of return illustrated in hypothetical historical illustrations will not follow a pattern and therefore are not useful to an investor attempting to

[67] Item 26(h).

[68] Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to take account of the reimbursement or waiver in calculating the example required by the fee table of Item 3, but only for the duration of the contractual limitation. Funds may not assume that the reimbursement or waiver will continue for periods subsequent to the contractual limitation period in calculating expenses shown in the example. *Cf.* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) (permitting funds with fees that are subject to a contractual limitation that requires reimbursement or waiver to add two lines to the fee table showing the amount of the reimbursement or waiver and total net expenses).

understand how a particular change in rates of return might affect policy values. In addition, hypothetical historical illustrations have limited value in presenting past performance because they depend on the particular hypothetical policyholder, face amount, and premium payment pattern selected. Hypothetical historical illustrations also tend to invite prospective investors to assume that the cash values and death benefits presented represent the values that they can expect and may be misconstrued as projections. Finally, hypothetical historical illustrations can add undue complexity to the information already presented to investors.

Nonetheless, we do not believe that it is appropriate to prohibit the use of hypothetical historical illustrations in the prospectus or SAI, provided that they are not incomplete, inaccurate, or misleading and do not, because of their nature, quantity, or manner of presentation, obscure or impede understanding of information that is required to be included.[69] We caution registrants, however, that it is incumbent upon them to ensure that any hypothetical historical illustrations comply with this standard.

Personalized Illustrations

Personalized illustrations are frequently provided by insurers to prospective variable life insurance investors at the point of sale. These illustrations reflect the investor's particular circumstances, including age, sex, risk classification, proposed face amount, and expected premium payment pattern. Proposed Form N–6 did not address personalized illustrations because these illustrations are customized for individual investors, delivered at the point of sale, and are not susceptible to inclusion in a prospectus. Form N–6, as adopted, follows the approach of the proposal, except that, at the suggestion of several commenters, we have added a requirement that registrants who make personalized illustrations available disclose that fact and provide a toll-free telephone number for requesting personalized illustrations.[70] As a result, insurers may use personalized illustrations in sales literature subject to the antifraud provisions of the federal securities laws and rule 156 under the Securities Act, as long as the sales literature is preceded or accompanied by the prospectus.[71] The antifraud provisions make it unlawful to use materially misleading sales literature in connection with the purchase or sale of investment company securities.

A significant number of commenters expressed the view that the Commission should prescribe requirements for personalized illustrations, either in Form N–6 or in another rulemaking or interpretive proceeding. These commenters argued that mandating some degree of uniformity would benefit investors, *e.g.,* by facilitating comparisons among different policies. The commenters suggested a range of approaches, including standards for personalized illustrations that are similar to the requirements for hypothetical prospectus illustrations, as well as standards conforming, to the extent practicable, to the National Association of Insurance Commissioners standards for fixed life insurance policy illustrations.[72]

The Commission has determined not to propose standards for personalized illustrations at this time. Commenters' views on the appropriate standards varied significantly, and, in some cases, were not specific, and we believe that it would be inadvisable to delay the benefits of Form N–6 in order to resolve differing views with respect to personalized illustrations.

In the Proposing Release, we expressed our view that it may be misleading to market a variable life insurance policy based on illustrations that reflect assumed rates of return and the fees and charges of a single Portfolio Company when those fees and charges are less than the arithmetic average of fees and charges for all available Portfolio Companies. For that reason, we noted our concern about the practice of using a single Portfolio Company's fees and charges in personalized illustrations. As described above, however, we would not object if personalized illustrations are provided to a particular investor based on a weighted average of the expenses of the Portfolio Companies in which the investor already invests or expects to invest, provided that the illustrations are not misleading.[73] As a result, if an investor invests or expects to invest in a single Portfolio Company, it is not *per se* misleading to use that Portfolio Company's fees and charges in personalized illustrations for that investor. We remain concerned, however, with personalized illustrations that use a single Portfolio Company's fees and charges in situations when an investor does not invest, or expect to invest, exclusively in that Portfolio Company, particularly when that Portfolio Company has low expenses relative to other Portfolio Companies.

C. Part C—Other Information—Exhibits—Actuarial Opinion (Item 27(l))

We are adopting with modifications proposed Item 27(l), which requires an opinion of an actuarial officer of the depositor if a registrant includes illustrations in the registration statement. As proposed, the actuarial opinion would have been required to indicate that: (i) The values illustrated are consistent with the provisions of the policy and the depositor's administrative procedures; (ii) the rate structure of the policy, and the assumptions selected for the illustrations, do not result in an illustration of the relationship between premiums and benefits that is materially more favorable than for a substantial majority of other prospective policyholders; and (iii) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the policy is sold.

Several commenters objected to the second prong of the actuarial opinion requirement, arguing that it would require difficult judgments for which there are no established standards. Commenters also noted that the requirement that the relationship between premiums and benefits not be materially more favorable than for a ''substantial majority'' of other prospective policyholders could in some cases conflict with other requirements of proposed Form N–6 regarding hypothetical illustrations.

We agree with commenters that modifications are required to our proposal. Therefore, we are replacing the second prong of the proposed actuarial opinion requirement with a requirement to indicate that the policy has not been designed, and the assumptions for the illustrations (including sex, age, rating classification, and premium amount and payment

[69] General Instruction C.3.(b).

[70] Item 1(b)(1); Item 26(a).

[71] Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder [17 CFR 240.10b–5]; Rule 156 under the Securities Act [17 CFR 230.156]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)]; Section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)].

[72] *Cf.* NASD Conduct Rules, ''Communications with the Public About Variable Life Insurance and Variable Annuities,'' IM–2210–2(b)(5)(B) (requiring personalized illustrations in sales literature to follow all of the standards set forth for hypothetical illustrations using assumed rates of return).

[73] *See supra* Section II.B.3, ''Permitted Use of Hypothetical Illustrations; Portfolio Company Charges and Expenses.''

schedule) have not been selected, to make the relationship between premiums and benefits, as shown in the illustrations, appear to be materially more favorable than for any other prospective purchaser with different assumptions.[74]

D. Technical Rule Amendments

When we proposed Form N–6, we also proposed several technical rule amendments to accommodate Form N–6. We are adopting these amendments as proposed.

The Commission is amending rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act and rules 8b–11 and 8b–12 under the Investment Company Act to add Form N–6 to the list of forms referenced in those rules.[75] We also are adopting new rules prescribing the use of Form N–6 to register insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies under the Investment Company Act and to register their securities under the Securities Act.[76] Finally, we are amending Form N–8B–2 to clarify that Form N–8B–2 is not the proper form for Investment Company Act registration of insurance company separate accounts registered as unit investment trusts.[77]

E. Adoption of Amendment to Form N–1A

Currently, Form N–1A does not require a mutual fund that offers its shares exclusively as investment options for variable annuity contracts and variable life insurance policies to include the fee table in its prospectus.[78] In the Proposing Release, we stated that if Form N–6, as adopted, did not require separate disclosure of the operating expenses of each Portfolio Company, we would amend Form N–1A to require the prospectus of a mutual fund that offers its shares as investment options for variable life insurance policies to include a fee table.[79] We also requested comment on whether to eliminate the exclusion from the fee table requirement in Form N–1A for mutual funds that offer their shares as investment options for variable annuity contracts if the exclusion is eliminated for mutual funds that offer their shares as investment options for variable life insurance policies.[80]

The only commenter to address the issue of whether disclosure of Portfolio Company expenses should be required in the Portfolio Company prospectus supported a requirement that a mutual fund offering its shares as investment options to variable life insurance policies include a fee table in its prospectus. The commenter agreed that the Portfolio Company prospectus is the appropriate location for disclosure of Portfolio Company operating expenses, though the commenter also suggested that the Form N–6 fee table should not include any Portfolio Company operating expenses.

As proposed, we are amending Form N–1A to eliminate the existing exclusion from the fee table requirement for mutual funds that offer their shares as investment options for variable life insurance policies. This will ensure that variable life investors have access to complete information about Portfolio Company fees and expenses. In addition, to foster consistent presentation of fund expenses for variable annuities and variable life insurance, we are eliminating the exclusion from the fee table requirement for mutual funds that offer their shares as investment options for variable annuity contracts.[81]

F. Effective Dates and Transition Period

Form N–6 will eventually replace Forms N–8B–2 and S–6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. As discussed in the Proposing Release, the Commission is providing for a transition period after the effective date of Form N–6 that gives registrants sufficient time to update their prospectuses or to prepare new registration statements under the new Form N–6 requirements.[82] After the transition period, separate accounts that are registered as unit investment trusts and that offer variable life insurance policies will be permitted to use Forms N–8B–2 and S–6 only if they no longer offer their policies to new purchasers. The Commission, however, encourages registrants that are no longer offering policies to new purchasers to convert to Form N–6 since this format may be beneficial to both registrants and continuing investors.

All new registration statements, and post-effective amendments that are annual updates to effective registration statements (except for separate account registration statements that are no longer used to offer variable life insurance policies to new purchasers) filed on or after December 1, 2002, must comply with Form N–6. The final compliance date for filing amendments to effective registration statements to conform with Form N–6 is December 1, 2003. A registrant may, at its option, comply with the requirements of Form N–6 at any time after the effective date, which the Commission is specifying as June 1, 2002.[83] Registrants on Form N–1A must comply with the amendment to Form N–1A with respect to all new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on or after September 1, 2002.

Registrants filing Form N–6 for purposes of updating their existing registration statements on Forms N–8B–2 and S–6 will be deemed to be filing amendments to Form N–6 and should indicate this on the facing sheet. These post-effective amendments should be filed under Securities Act rule 485(a) rather than rule 485(b).[84] Form N–6 will

[74] Item 27(l)(2).

[75] 17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, and 230.497; 17 CFR 270.8b–11 and 270.8b–12.

[76] 17 CFR 239.17c; 17 CFR 274.11d.

[77] *See* amendments to Form N–8B–2 and 17 CFR 274.12 (prescribing Form N–8B–2). The Commission did not propose and is not adopting amendments to Form S–6 or 17 CFR 239.16 (prescribing Form S–6) because the form and the rule state that Form S–6 is to be used to register the securities of unit investment trusts registered on Form N–8B–2.

[78] Item 3 of Form N–1A.

[79] Form N–6 Proposing Release, *supra* note 9, 63 FR at 13994.

[80] *Id.*

[81] One commenter encouraged the Commission to make Portfolio Company expense disclosure requirements in Forms N–6 and N–4 consistent, arguing that a requirement to report Portfolio Company expenses for variable life prospectuses differently than for variable annuity prospectuses would complicate the process of preparing registration statements without improving the quality of disclosure. In a companion release, we are proposing amendments to generally conform the format and instructions for the variable annuity fee table to that in Form N–6. *See* Form N–4 Proposing Release, *supra* note 1. In the Form N–4 Proposing Release, we noted that if we adopt changes to the Form N–4 proposals in response to comments, we intend to adopt conforming changes to Form N–6. We therefore requested that commenters on the proposed amendments to the fee table of Form N–4 address how their comments would apply to the fee table of Form N–6, and whether a different approach to any aspect of fee and expense disclosure is warranted in Form N–6 because of the differences between variable life insurance and variable annuities.

[82] *See* Form N–6 Proposing Release, *supra* note 9, 63 FR at 14001.

[83] During the transition period, a separate account that is using Form N–6 should include in Item 3 a fee table for any Portfolio Company whose Form N–1A has not been updated to include a fee table as required by the amendment to Form N–1A.

[84] A post-effective amendment may only be filed under rule 485(b) under the Securities Act [17 CFR 230.485(b)] if it is filed for one or more specified purposes, including to make non-material changes to the registration statement. A post-effective amendment filed for any purpose not specified in rule 485(b) must be filed pursuant to rule 485(a) under the Securities Act [17 CFR 230.485(a)]. A post-effective amendment filed under rule 485(b) may become effective immediately upon filing, while a post-effective amendment filed under rule 485(a) generally becomes effective either 60 days or

require registration statement disclosure that is revised from that required by Forms N–8B–2 and S–6 and, in some cases, such as the fee table information required by Item 3, completely new. Because post-effective amendments filed to comply with the requirements of Form N–6 will involve a number of material changes to disclosure that do not fall within the scope of rule 485(b), registrants should file these amendments under rule 485(a).[85] However, we would not object if existing Portfolio Companies file their first annual update complying with the amendment to Form N–1A pursuant to rule 485(b), provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.

One commenter requested that, because Form N–6 will include financial statements in an SAI to be made available to investors upon request, the Commission permit existing registrants to make financial statements available only upon request while using Forms N–8B–2 and S–6 during the transition period. We have determined not to adopt the commenter's suggestion. We believe that Form N–6, taken as a whole, represents a dramatic improvement in the disclosure that investors in variable life insurance policies receive. Therefore, we believe that it would not generally be appropriate for a post-effective amendment to comply with some, but not all, of the requirements of the form.

G. Form N–1

The Commission requested comment on whether there is any continuing need for Form N–1 or whether it could be rescinded. The form currently would be used only by an open-end management investment company that is a separate account of an insurance company offering variable life insurance policies. Today, virtually all separate accounts issuing variable life insurance policies are organized as unit investment trusts.

One commenter noted that several contracts registered on Form N–1 are still in existence, but not actively marketed. The commenter recommended that the form be retained because requiring these registrants to convert to a new format would be unnecessarily expensive and unproductive. The Commission has decided to retain the Form N–1 because of this continuing need for it.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules. In the Proposing Release, we requested comments and empirical data regarding the costs and benefits of proposed Form N–6. Many commenters stated that the adoption of Form N–6 would significantly benefit the variable life insurance industry, by reducing printing and postage costs for registrants issuing variable life insurance products, and some commenters noted that these savings may be passed on to investors. None of these commenters, however, provided specific data quantifying the costs or benefits of the proposed form.

A. Background

Variable life insurance is similar to traditional life insurance, except that the cash value and/or death benefit vary based on the investment performance of the assets in which the premium payments are invested. Premium payments under a variable life insurance policy, unlike a traditional life insurance policy, are invested in an insurance company separate account, which generally is not subject to state law investment restrictions. A variable life policyholder typically is offered a variety of investment options (*e.g.,* equity, bond, and money market mutual funds). Death benefits and cash values are directly related to performance of the separate account, although typically there is a guaranteed minimum death benefit.

A separate account funding a variable life insurance policy most commonly is registered as a unit investment trust under the Investment Company Act. Separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different Portfolio Company. Both separate account unit investment trusts and the Portfolio Companies in which they invest are registered as investment companies under the Investment Company Act, and their securities are registered under the Securities Act. Investors in variable life insurance policies receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies. Portfolio Companies, as mutual funds, use Form N–1A to register under the Investment Company Act and to register their shares under the Securities Act. Variable life separate accounts, as unit investment trusts, register under the Investment Company Act on Form N–8B–2 and register their securities under the Securities Act on Form S–6.

Forms N–8B–2 and S–6 were designed for non-separate account unit investment trusts and were adopted before the establishment of the first separate account to fund variable life insurance policies. While much of their required disclosure is useful, the forms request some information that is not typically of consequence to a buyer of variable life insurance. More importantly, many matters that would be significant to a buyer of a variable life insurance policy are not addressed at all by the forms.

To address these shortcomings, the Commission proposed Form N–6. Unlike current Forms S–6 and N–8B–2, Form N–6 is specifically tailored to variable life insurance. Form N–6 will streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and a statement of additional information, containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.

B. Benefits

1. Reduced Printing and Postage Costs

As described above, Form N–6 will employ a two-part disclosure format consisting of a simplified prospectus, and a statement of additional information, or SAI. As several commenters on the Proposing Release stated, this two-part disclosure format would reduce needless printing and postage expenses significantly.[86] These savings could be substantial, because many variable life insurance issuers send an updated prospectus to existing policyholders each year.

In particular, under Form N–6 the financial statement disclosure of the

75 days after filing, unless the effective date is accelerated by the Commission.

[85] *See* N–4 Adopting Release, *supra* note 8, 50 FR at 26156 n.51 (variable annuity registrants converting to Form N–3 or Form N–4 required to file post-effective amendment under rule 485(a)); Letter from Barry D. Miller, Associate Director, Division of Investment Management, to Craig S. Tyle, Esq., General Counsel, Investment Company Institute (May 19, 1998) (post-effective amendments to comply with revised Form N–1A should be filed under rule 485(a)).

The Commission encourages registrants to request selective review of their filings, where the filing contains disclosure that is not substantially different from the disclosure contained in prior filings reviewed by the staff. *See* Investment Company Act Release No. 13768 (Feb. 15, 1984) [49 FR 6708]. Selective review enables the staff to concentrate its review on those portions of the filing that are changed.

[86] *See* comment letters from John Hancock Mutual Life Insurance Company (June 30, 1998), The Equitable Life Assurance Society of the United States (July 10, 1998), ReliaStar Financial Corp. (July 16, 1998), and American Council of Life Insurance (Aug. 10, 1998). The comment letters are available for public inspection and copying at the Commission's Public Reference Room in File No. S7–9–98.

registrant separate account and the insurance company depositor, which is currently required to be included in the prospectus for the variable life insurance policy, would be presented in the newly created SAI or in Part C of the registration statement, and would generally only be provided to investors upon request. The financial statements contained in variable life insurance prospectuses typically are between 30 and 80 pages in length, and the printing and postage costs attributable to these financial statements may range from $5,400 to $323,000, depending on the number of copies printed and the length of the financial statements.[87] Therefore, based on an estimate of 200 variable life insurance policies registered with the Commission, the cost savings resulting from the exclusion of financial statements from variable life insurance prospectuses could range from $1,080,000 to $64,600,000, although we believe that an estimate at the lower end of this range is more likely.[88] One insurance company provided the staff with an estimate that it would have saved $61,254 overall in the printing costs of its 2001 variable life insurance prospectuses, if it had been able to exclude the financial statements from its prospectuses.[89] Therefore, the Commission believes that the cost savings to issuers resulting from exclusion of financial statements from the Form N–6 prospectus could be significant. Further, at least some of these cost savings could be passed on to investors.

We note that these cost savings may be reduced if investors in a variable life insurance policy request copies of the SAI, which will contain many of the financial statements currently required in the Form S–6 prospectus, or if registrants must deliver copies of the SAI to variable life investors for other reasons, such as to meet state regulatory requirements. Some insurers may also need to incur costs in setting up and maintaining a system for processing requests for an SAI, including a toll-free telephone number. However, based on the staff's discussions with issuers regarding other investment company registration forms, such as Form N–4 and Form N–1A, we estimate that fewer than 1% of investors are likely to request an SAI. Currently, at least one state requests that issuers agree to deliver an SAI to applicants for a variable contract.[90]

2. Reduced Filing Costs

The adoption of Form N–6 will allow variable life insurance registrants to use a single integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting. As a result of this simplified registration process, the Commission estimates that the annual net cost savings to issuers of variable life insurance policies for preparing and filing initial registration statements and post-effective amendments on Form N–6 will be $2,141,288. The annual costs of filing initial registration statements and post-effective amendments on Forms S–6, N–8B–2, and N–6 are summarized in the tables below, and the discussion that follows:

COST OF INITIAL FILINGS ON FORMS S–6, N–8B–2, AND N–6

	Form S–6	Form N–8B–2	Form N–6	Form N–6, net cost savings
Number of filings	59	24	59	
Hours per filing	850	44	800	
Total hours	50,150	1056	47,200	
Internal cost per filing	$71,400	$3,696	$67,200	7,896
Total internal costs	4,212,600	88,704	3,964,800	336,504
External cost per filing	30,000	0	20,000	10,000
Total external cost	1,770,000	0	1,180,000	590,000
Total costs per filing	101,400	3,696	87,200	17,896
Total filing costs	5,982,600	88,704	5,144,800	926,504

COST OF FILING POST-EFFECTIVE AMENDMENTS ON FORMS S–6, N–8B–2, AND N–6

	Form S–6 (post-effective amendments filed as annual updates)	Form S–6 (post-effective amendments filed for other reasons)	Form N–8B–2	Form N–6 (post-effective amendments filed as annual updates	Form N–6 (post-effective amendments filed for other reasons)	Form N–6, Net cost savings
Number of filings	200	300	11	200	300	
Hours per filing	100	10	16	100	10	
Total hours	20,000	3000	176	20,000	3000	

[87] These estimates are based on information supplied to the Commission staff by three life insurance companies.

[88] The estimate of the number of variable life insurance policies is based on the Commission's analysis of data from its EDGAR system on the number of initial registration statements and post-effective amendments filed on Form S–6 in 2000 and 2001 by separate accounts offering variable life insurance policies.

[89] This insurer notes that it currently maintains 20 variable life prospectuses, which in 2001 included 1007 pages of depositor and separate account financial statements.

[90] According to a representative of an insurance industry group, California currently asks registrants to agree to provide an SAI to all applicants for a variable annuity contract in order to obtain expedited state approval of the contract.

COST OF FILING POST-EFFECTIVE AMENDMENTS ON FORMS S–6, N–8B–2, AND N–6—Continued

	Form S–6 (post-effective amendments filed as annual updates)	Form S–6 (post-effective amendments filed for other reasons)	Form N–8B–2	Form N–6 (post-effective amendments filed as annual updates	Form N–6 (post-effective amendments filed for other reasons)	Form N–6, Net cost savings
Internal costs per filing	$8,400	$840	$1344	$8,400	$840	$1344
Total internal costs	1,680,000	252,000	14,784	1,680,000	252,000	14,784
External cost per filing	13,500	2,000	0	7,500	2,000	6,000
Total external costs	2,700,000	600,000	0	1,500,000	600,000	1,200,000
Total costs per filing	21,900	2,840	1344	15,900	2,840	7,344
Total filing costs	4,380,000	852,000	14,784	3,180,000	852,000	1,214,784

Form S6

The Commission estimates that 59 initial registration statements and 500 post-effective amendments are filed by variable life insurance policies on Form S–6 annually.[91] We estimate the hour burden of an initial registration statement filed on Form S–6 at 850 hours, which is similar to, but slightly greater than, the hour burden of an initial registration statement filed on Form N–6, which we estimate to be 800 hours.[92] The difference in this hour burden is attributable to the fact that Form S–6, on balance, requires more information to be included in an initial registration statement than would Form N–6.[93] Thus, we estimate internal costs involved in preparing an initial registration statement on Form S–6, based on a weighted average hourly wage rate of $84, at $71,400 (850 hours × $84).[94]

We estimate external costs associated with completing an initial registration statement on Form S–6 to be $30,000, compared to $20,000 on Form N–6. These external costs include all costs associated with filing on Form S–6 other than wages, salaries, and fees paid for the hour burden. These costs may include, for example, the cost of preparing a filing for the EDGAR system (''EDGARization''), typesetting of the prospectus (which is typically done before the prospectus is filed on EDGAR), and the cost of outside counsel and independent auditors in connection with filing on Form S–6. The difference in external costs between Form S–6 and Form N–6 is attributable primarily to the fact that the required inclusion of financial statements in the Form S–6 prospectus results in significantly higher costs for typesetting and EDGARization associated with filing a registration statement.[95] Based on an estimate of internal costs of $71,400 and external costs of $30,000 per initial registration statement on Form S–6, therefore, we estimate the total cost to a variable life insurance issuer of preparing and filing an initial registration statement on Form S–6 to be $101,400. Thus, total annual costs to variable life insurance issuers of filing initial registration statements on Form S–6 are estimated to be $5,982,600 ($101,400 × 59).

There are also costs associated with filing post-effective amendments on Form S–6. The Commission estimates, based on the numbers of filings received on EDGAR in 2001, that there are approximately 200 variable life insurance policies registered with the Commission that file at least one post-effective amendment per year to update their financial statements. These post-effective amendments may be filed pursuant to Securities Act rule 485(a) or rule 485(b). In addition to filing at least one post-effective amendment annually to update their financial statements, the Commission estimates that these variable life insurance policies also file an estimated 300 other post-effective amendments annually on Form S–6. These 300 other post-effective amendments are generally filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement, and are generally more limited and much simpler to

[91] These estimates are based on the staff's analysis of data from the EDGAR system on the number of initial registration statements and post-effective amendments filed on Form S–6 in 2000 by separate accounts offering variable life insurance policies. The numbers of initial registration statements and post-effective amendments filed on Form S–6 have been consistent in recent years. Based on this data, we estimate that there are approximately 200 registered variable life insurance policies that file at least one post-effective amendment per year to update their financial statements. In addition to filing at least one annual update by post-effective amendment, these variable life insurance policies also file an estimated 300 other post-effective amendments annually on Form S–6. These 300 other post-effective amendments are generally filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement, and are generally more limited and much simpler to prepare than post-effective amendments filed for the purpose of annual updates.

[92] Form N–6 Proposing Release, *supra* note 9, 63 FR at 14002. The hour burden estimate of 800 hours for Form N–6 is based on the hour burden estimate for similar investment company registration forms, in particular Form N–1A, which are of similar length and complexity. *See* Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826, 59854 nn. 293–294 (Nov. 3, 1999)] (estimating PRA hour burden per portfolio at 800 hours for an initial filing on Form N–1A, and 100 hours for a post-effective amendment on Form N–1A).

The Commission has estimated the average hour burden of preparing Form S–6, for purposes of the Paperwork Reduction Act, to be 35 hours per unit investment trust. *See* Submission for OMB Review; Comment Request (Extension of Form S–6) (Nov. 30, 1998) [63 FR 67152 (Dec. 4, 1998)]. However, the vast majority of investment companies filing on Form S–6 are not unit investment trusts offering variable life insurance policies. *See id*. (estimating that ''[e]ach year approximately 3,600 investment companies file a Form S–6''). The hourly burden and cost of filing a variable life insurance policy on Form S–6 are much greater than for other unit investment trusts, largely because of the complexity of the product.

[93] For example, Form S–6 requires interim financial statements to be included in a registration statement in circumstances where they would not be required by Form N–6; *see* Instruction 3 to Item 24.

[94] The Commission's estimate concerning the weighted average wage rate to prepare Forms S–6, N–8B–2, and N–6 is based on salary information for the securities industry compiled by the Securities Industry Association, and on consultation with industry representatives regarding the percentage of time required by both professional and clerical staff to prepare these forms. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry—2000* (Sept. 2000). The weighted average hourly wage rate of $84 per hour includes overhead costs and assumes that at least 80% of the total time required to prepare Form N–6 would be incurred by attorneys and accountants, and any remaining time would be incurred by paralegal staff.

[95] The estimates of these external costs, which are distinct from the printing and postage costs described above, are based on information supplied to the staff by several life insurance companies, in light of their experience in filing on Forms S–6 and N–4.

prepare than post-effective amendments filed as annual updates.

We estimate that the cost of preparing and filing a post-effective amendment to a previously effective registration statement on Form S–6 for the purpose of an annual update is $21,900, which reflects internal costs of $8,400 (100 hours × $84) plus external costs of $13,500. While the estimated internal costs of filing an annual update on Form S–6 are the same as those for Form N–6, the estimated external costs of $13,500 are significantly higher than the comparable $7,500 costs for annual updates on Form N–6, largely because of higher costs for typesetting and EDGARization resulting from the inclusion of financial statements in the Form S–6 prospectus. Thus, the total annual cost to variable life insurance issuers of filing post-effective amendments on Form S–6 for the purpose of annual updates is $4,380,000 ($21,900 × 200 filings).[96]

We estimate the cost of preparing and filing a post-effective amendment on Form S–6 for a purpose other than an annual update to be $2,840, which reflects internal costs of $840 (10 hours × $84) plus other external costs of $2,000.[97] These estimated costs are the same as those for filing such an amendment on Form N–6.

Thus, we estimate that the requirement that variable life insurance separate accounts file on Form S–6 results in an annual cost to registrants of approximately $11,214,600 ((59 × $101,400) + (200 × $21,900) + (300 × $2,840)).

Form N–8B–2

The Commission estimates that variable life insurance separate accounts file 24 initial registration statements and 11 post-effective amendments on Form N–8B–2 annually. The current estimated cost of preparing an initial registration statement on Form N–8B–2 is $3,696, and the estimated cost of preparing each post-effective amendment on Form N–8B–2 is $1,344. [98] Thus, we estimate that the requirement that variable life insurance separate accounts file on Form N–8B–2 results in an annual cost to registrants of approximately $103,488 ((24 x $3,696) + (11 x $1,344)).

Form N–6

The Commission estimates that approximately 59 initial registration statements and 500 post-effective amendments will be filed on Form N–6 annually.[99] We estimate that the cost of preparing and filing an initial registration statement on Form N–6 will be $87,200, based on an estimate of 800 hours and $20,000 in external costs per initial registration statement, as described above.[100] In addition, we estimate that the cost of preparing and filing a post-effective amendment to a previously effective registration statement for the purpose of an annual update is $15,900, based on an estimate of 100 hours and $7,500 in external costs per annual update post-effective amendment, as described above.[101] The estimated cost of preparing and filing a post-effective amendment on Form N–6 for a purpose other than an annual update is $2,840.[102] The total annual cost to issuers of variable life insurance policies filing on Form N–6 is therefore estimated to be $9,176,800 ((59 x $87,200) + (200 x $15,900) + (300 x $2,840)).

Thus, we estimate an annual net savings in filing costs to issuers of variable life insurance policies of approximately $2,141,288 (total annual costs of $9,176,800 associated with filing on Form N–6 compared to total annual costs of $11,318,088 associated with filing on Forms S–6 and N–8B–2).

3. Enhanced Disclosure Information

Form N–6 will enhance the disclosure provided to investors about variable life insurance policies in several respects:

- *Tailored Registration Form.* Form N–6 will eliminate requirements in Forms S–6 and N–8B–2 that are not relevant to variable life insurance. Form N–6 also will include items that are specifically addressed to variable life insurance products, such as descriptions of contractual provisions relating to premiums, death benefits, cash values, surrenders and withdrawals, and loans.[103]
- *Plain English.* The Commission's plain English rule will apply to the front and back cover pages and the risk/benefit summary in the variable life insurance prospectus.[104] This should result in better, clearer disclosure to investors.
- *Reducing Complex and Lengthy Prospectus Disclosure.* Form N–6 will streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and an SAI containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.
- *Standardized Fee Information.* Form N–6 will require variable life insurance registrants to provide a uniform, tabular presentation of fees and charges, in order to improve the

[96] The cost estimate for preparing and filing a post-effective amendment filed as an annual update on Form S–6 was calculated by multiplying the estimated number of hours required to prepare this type of post-effective amendment on Form S–6 (100 hours) by the weighted average hourly wage ($84), and adding other costs associated with completing a post-effective amendment of $13,500.

[97] The cost estimate for an additional post-effective amendment filed on Form S–6 is calculated by multiplying the estimated number of hours to prepare the post-effective amendment (10 hours) by the weighted average hourly wage ($84) and adding other costs associated with completing the post-effective amendment of $2,000.

[98] The cost estimate for an initial registration statement on Form N–8B–2 is calculated by multiplying the estimated number of hours to prepare an initial registration statement on Form N–8B–2 (44 hours) by the weighted average hourly wage ($84). The cost estimate for a post-effective amendment on Form N–8B–2 is calculated by multiplying the estimated number of hours required to prepare a post-effective amendment to Form N–8B–2 (16 hours) by the weighted average hourly wage ($84). *See* Proposed Collection; Comment Request (Extension of Form N–8B–2) (May 17, 2001) [66 FR 28764 (May 24, 2001)] (estimating 44 hours for initial registration statement on Form N–8B–2 and 16 hours for post-effective amendment on Form N–8B–2).

[99] These estimates are based on the staff's analysis of data from the EDGAR system on the number of initial registration statements and post-effective amendments filed on Form S–6 in 2000 by separate accounts offering variable life insurance policies. The numbers of initial registration statements and post-effective amendments filed on Form S–6 have been consistent in recent years. Based on this data, we estimate that there are approximately 200 registered variable life insurance policies that file at least one post-effective amendment per year to update their financial statements. In addition to filing at least one annual update by post-effective amendment, these variable life insurance policies will also file an estimated 300 other post-effective amendments annually on Form N–6. We expect that these 300 other post-effective amendments will generally be filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement, and will generally be more limited and much simpler to prepare than post-effective amendments filed for the purpose of annual updates.

[100] *See* Form N–6 Proposing Release, *supra* note 9, 63 FR at 14002 (estimating burden of preparing initial registration statement on Form N–6 at 800 hours and $20,000 in additional costs).

[101] *See* Form N–6 Proposing Release, *supra* note 9, 63 FR at 14002 (estimating that 200 separate accounts offering variable life insurance policies would file annual post-effective amendments on Form N–6, at an hour burden of 100 hours per post-effective amendment and cost of $7,110,500 per post-effective amendment); *see also* note 110 *infra.*

[102] The cost estimate for a post-effective amendment filed on Form N–6 for a purpose other than an annual update is calculated by multiplying the estimated number of hours to prepare the post-effective amendment (10 hours) by the weighted average hourly wage ($84) and adding other costs associated with completing the post-effective amendment of $2,000. We estimate that the hours and cost necessary to prepare a post-effective amendment for this purpose on Form N–6 will be the same as those needed to prepare this type of post-effective amendment on Form S–6.

[103] Items 7 (premiums), 8 (death benefits and cash values), 9 (surrenders and withdrawals), and 10 (loans).

[104] Rule 421(d) under the Securities Act [17 CFR 230.421(d)].

disclosure to investors of the often complex charges associated with variable life insurance policies and increase the comparability of charges among policies.

This improved disclosure of the features of variable life insurance policies that will result from the adoption of Form N–6 will provide several important benefits. First, because of improved disclosure, investors will be more informed about the features of different policies, and will be able to spend less time searching for a variable life insurance contract that is best suited to their particular needs. For example, an investor who is interested in finding a variable life insurance policy with a particular set of features at the lowest cost may be able to do so more easily, because the Form N–6 prospectus requires prominent disclosure of the risks and benefits of the policy, and a standardized table of the fees and charges assessed by the policy. In addition, the improved disclosure required by Form N–6 will promote competition among issuers of variable life insurance policies as they seek to attract these more informed investors. Thus, improved disclosure will result in more efficient allocation of investors' assets among competing variable life insurance policies, and also vis-à-vis other, competing types of financial products. This beneficial effect may be somewhat limited, however, by the extent to which investors do not rely on a prospectus in choosing whether to purchase a variable life insurance policy, but instead may rely on brokers and other investment professionals in determining whether to purchase a variable life insurance policy. In some cases, investment professionals may use the improved disclosure in the prospectus of Form N–6 to make more informed sales recommendations to investors.

Second, the improved disclosure promoted by Form N–6 may promote competition among issuers of variable life insurance policies, and hence may also result in more efficient asset allocation among variable life insurance policies. Although it is not possible to quantify the beneficial effects of this increased competition, we believe that they may be significant, given that assets in variable life insurance products total approximately $42.8 billion, and new variable life insurance premiums may equal $6.9 billion per year. [105]

Third, because Form N–6, unlike Forms S–6 and N–8B–2, will require disclosure specifically tailored to variable insurance policies, the adoption of Form N–6 may permit the Commission staff who review variable life insurance filings on Form S–6 to review these filings more quickly and efficiently, and thus to provide investor protection more effectively.

In connection with the adoption of Form N–6, the Commission is also amending Form N–1A, the registration form for open-end management investment companies, by removing the current exclusion from the fee table requirement of Form N–1A for funds that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies, and requiring that these funds include a fee table in their prospectuses. This amendment is being made because the fee table in the Form N–6 prospectus will allow variable life registrants to disclose the range of expenses for all Portfolio Companies offered through a variable life insurance policy in the variable life prospectus, rather than having to separately state the fees and charges of each Portfolio Company. This amendment to Form N–1A will ensure that variable life insurance investors continue to have access to complete information about Portfolio Company fees and expenses. Further, because currently the requirements for disclosure of Portfolio Company fees and expenses in variable annuity and variable life prospectuses vary, to a limited extent, from the disclosure requirements of Form N–1A, the amendment will produce consistent disclosure of fees and expenses by Portfolio Companies that offer their shares exclusively through separate accounts and by mutual funds that sell shares directly to the public. This more consistent disclosure may result in more efficient allocation of assets among variable insurance products and mutual funds.

C. Costs

Variable life insurance issuers will incur a one-time cost for training in order for their personnel, particularly lawyers and others who are responsible for supervising the preparation of variable life insurance filings, to review and analyze the disclosure requirements of Form N–6. Although Form N–6 is a new registration form, much of the information required by Form N–6 is already required by existing registration forms. Further, Form N–6 has been the subject of extensive discussion within the variable life insurance industry, and many industry participants are already generally familiar with its requirements. Therefore, we expect that this one-time cost will be significant but limited. Because we expect that in each insurance company issuing variable life insurance policies, several lawyers and other supervisory professionals will require several hours of training in the disclosure requirements of Form N–6, we estimate that this cost will be $20,000 for each variable life insurance policy that is currently registered on Form S–6 and is actively being sold. Based on an estimate of 200 variable life insurance policies that are currently registered on Form S–6, we estimate these one-time costs attributable to the adoption of Form N–6 at $4,000,000 ($200 \times \$20{,}000$).

Further, because Form N–6 will require an insurer issuing a variable life insurance policy to deliver an SAI to investors upon request, and to maintain a toll-free telephone number for investors to use in requesting the SAI, some insurers may need to incur both fixed and variable costs in setting up and maintaining a system for processing these requests.[106] However, because only a small percentage of investors are expected to request an SAI, these costs may be limited. In addition, because Form N–6 will allow financial statements to be included in the SAI rather than the prospectus, insurers may realize savings on fixed costs associated with typesetting the prospectus, regardless of the numbers of investors who request an SAI.

In addition to costs imposed by the adoption of Form N–6, the amendments the Commission is adopting to Form N–1A will impose certain costs on funds registered on Form N–1A that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies. The Commission estimates that 163 post-effective amendments on Form N–1A and 9 initial registration statements on Form N–1A are filed annually for fund portfolios that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies and hence do not include a fee table in their prospectuses.[107] We estimate that the

[105] *Lipper Variable Insurance Products Performance Analysis,* 4th Quarter 2001 Report, Vol. I at 1–1, *supra* note 4; Geraldine Murtagh, *Variable Life Still Cookin'; 3rd Quarter Sales Surged 29%,* National Underwriter Life & Health/Financial Services Edition, Jan. 15, 2001, at 26 (discussing industry survey estimating that new variable life insurance premiums equaled $5.18 billion for the first 9 months of 2000).

[106] Item 1(b)(1) of Form N–6.

[107] These estimates are based on the Commission's analysis of data from its EDGAR system on the number of initial registration statements and post-effective amendments filed on Form N–1A in 2000 by funds offering shares

Continued

hour burden of adding fee table disclosure to these registration statements will be minimal, because the fund portfolios must already compile and provide fee table information for issuers of variable insurance contracts that include these portfolios as investment options, and hence provide information about their fees and expenses in the contract prospectuses.

Therefore, we estimate that the average hour burden per Form N–1A registration statement for adding this fee information will be 2 hours, for either an initial registration statement or a post-effective amendment. Based on an estimated number of 10 portfolios per registration statement for a fund offering its shares exclusively as investment options for variable annuity contracts and variable life insurance policies, the average hour burden per portfolio for adding this disclosure will be 0.2 hours.[108] We therefore estimate the annual industry cost of the amendments to Form N–1A to be 344 hours, or $28,896.[109]

D. Conclusion

Based on information provided in the comment letters and its own analysis, the Commission believes that the adoption of Form N–6 will permit separate accounts issuing variable life insurance policies to register under the Investment Company Act and to offer their securities under the Securities Act more efficiently, and that, in the long term, the benefits of the new form justify the associated costs.

IV. Paperwork Reduction Act

A. Adoption of Form N–6

As explained in the Proposing Release, certain provisions of Form N–6 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. We published a notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission did not receive any comments on the Paperwork Reduction Act portion of the Proposing Release.

As described above, Form N–6 will be used by insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. Form N–6 will provide these variable life insurance separate accounts a single, integrated form for Investment Company Act and Securities Act registration. For these separate accounts, it will replace Form N–8B–2, currently used by separate accounts to register as unit investment trusts under the Investment Company Act, and Form S–6, currently used by separate accounts to offer their securities under the Securities Act. A registration statement on Form N–6 will consist of a simplified prospectus that is designed to include items that are specifically addressed to variable life insurance products, a statement of additional information that contains more extensive information that investors could obtain upon request, and other information not included in the prospectus or the SAI.

The information required by Form N–6 is primarily for the use and benefit of investors. The Form N–6 prospectus will contain essential information to assist an investor in making an investment decision, such as a description of contractual provisions relating to premiums, death benefits, cash values, loans, and surrenders and withdrawals. The prospectus will also include a uniform, tabular presentation of fees and charges, which will improve disclosure and enhance the comparability of charges among policies. Information requirements in the current registration forms that are not relevant to variable life insurance will be eliminated from the Form N–6 prospectus. The information required to be filed with the Commission pursuant to the information collection will also permit the verification of compliance with securities law requirements and will assure the public availability and dissemination of the information.

In the Proposing Release, the Commission estimated the burden hours that would be necessary for the collection of information requirements under the proposed Form N–6. We have, however, revised certain estimates contained in the Proposing Release based on an analysis of the data contained in the Commission's EDGAR system with respect to the number of initial registration statements and post-effective amendments filed on Forms S–6 and N–8B–2 by separate accounts offering variable life insurance in the years 2000 and 2001.

The Commission estimates that there are approximately 200 variable life insurance policies issued by separate accounts registered as unit investment trusts. The Commission estimates that these separate accounts will file as many as 59 initial registration statements and 500 post-effective amendments on proposed Form N–6 annually.[110]

In the Proposing Release, the Commission estimated that the hour burden for preparing and filing an initial registration statement on proposed Form N–6 is 800 hours.[111] We received no comments on this estimate, and therefore we continue to estimate that the hour burden for an initial filing on Form N–6 is 800 hours. Thus, the annual hour burden for preparing and filing initial registration statements on Form N–6 would be 47,200 hours (59 × 800 hours). We estimate that the hour burden for preparing and filing a post-effective amendment on proposed Form N–6 for purposes of an annual update is 100 hours, while additional post-effective amendments would require 10 hours. Thus, the total annual hour

exclusively to one or more separate accounts. The numbers of initial registration statements and post-effective amendments filed on Form N–1A by these funds have been consistent in recent years.

[108] The Commission has previously estimated that 1,575 funds registered on Form N–1A are underlying portfolios for variable insurance contracts. *See* After-Tax Returns Adopting Release, *supra* note 16, 66 FR at 9012. The estimate of ten portfolios per registration statement is based on the number of portfolios currently registered (1,575) divided by the number of registrants filing post-effective amendments (163).

[109] This cost estimate was calculated by multiplying the annual hour burden (344) by the weighted average hourly wage ($84).

[110] In the Form N–6 Proposing Release, the Commission estimated that there would be as many as 50 initial registration statements and 200 post-effective amendments that would be filed annually on proposed Form N–6. This estimate was based on the fact that there were approximately 200 separate accounts issuing variable life insurance policies registered with the Commission, and that each separate account must file at least on post-effective amendment per year to update its financial statements. The Commission estimates, based on its analysis of data from the EDGAR filing system for 2000 and 2001, that there are approximately 200 variable life insurance policies currently registered with the Commission filing annual post-effective amendment updates. In addition to filing at least one post-effective amendment annually to update their financial statements, the Commission estimates, based on EDGAR filing data, that these variable life insurance policies also file 300 additional post-effective amendments annually on Form S–6. These 300 other post-effective amendments are generally filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement, and are generally more limited and much simpler to prepare than post-effective amendments filed as annual updates. Accordingly, we estimate the hour burden for each of these additional post-effective amendments to be 10 hours. We estimate that the number of post-effective amendments filed on Form N–6 as annual updates, and the number of post-effective amendments filed on Form N–6 for other purposes, will be the same as the numbers of such post-effective amendments currently filed on Form S–6.

[111] The hour burden of 800 hours for Form N–6 is based on the hour burden estimate for similar investment company registration forms, in particular Form N–1A, which are of similar length and complexity. *See* Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826, 59854 nn. 293–294 (Nov. 3 1999)] (estimating PRA hour burden per portfolio at 800 hours for an initial filing on Form N–1A, and 100 hours for a post-effective amendment on Form N–1A).

burden for preparing and filing post-effective amendments on Form N–6 would be 23,000 hours ((200 × 100 hours) + (300 × 10 hours)). The total annual hour burden for proposed Form N–6, therefore, is estimated to be 70,200 hours (47,200 hours + 23,000 hours).

The Commission estimates that the cost burden for preparing and filing an initial registration statement on proposed Form N–6 is $20,000. This cost burden includes all costs associated with filing on Form N–6 other than wages, salaries, and fees paid for the hour burden. These costs may include, for example, the cost of preparing a filing for the EDGAR system (''EDGARization''), typesetting of the prospectus (which is typically done before the prospectus is filed on EDGAR), and the cost of outside counsel and independent auditors in connection with filing on Form N–6. Thus, the annual cost burden for preparing and filing initial registration statements would be $1,180,000 (59 × $20,000). The Commission estimates that the cost burden for preparing and filing a post-effective amendment on proposed Form N–6 for purposes of an annual update is $7,500, while the cost of preparing and filing an additional post-effective amendment is $2,000. Thus, the total annual cost burden for preparing and filing post-effective amendments on Form N–6 would be $2,100,000 ((200 × $7,500) + (300 × $2,000)). The total annual cost burden for proposed Form N–6, therefore, is estimated to be $3,280,000 ($2,100,000 + $1,180,000).

OMB approved the collection requirements contained in Form N–6 (OMB Control No. 3235–0503). The title for the collection of information is ''Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Investment Trusts.'' The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. 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.

B. Amendment to Form N–1A

Form N–1A, the registration form for open-end management investment companies, contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies.'' The information collection requirements imposed by Form N–1A are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form N–1A (OMB Control No. 3235–0307) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a-8] and section 5 of the Securities Act [15 U.S.C. 77e]. The purpose of Form N–1A is to meet the registration and disclosure requirements of the Securities Act and Investment Company Act and to enable open-end management investment companies to provide investors with information necessary to evaluate an investment in an investment company.

The Commission is amending Form N–1A by eliminating the current exclusion from the fee table requirement of Form N–1A for funds that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies, and requiring that these funds include a fee table in their prospectuses. This amendment is being adopted because the fee table in the Form N–6 prospectus will require variable life registrants to disclose the range of expenses for all Portfolio Companies offered through a variable life insurance policy, rather than separately stating the fees and charges of each Portfolio Company. In addition, the Commission is proposing amendments to conform the treatment of fund expenses in the fee table of Form N–4, the registration form for variable annuity contracts, to that in Form N–6.[112] The amendment to Form N–1A will ensure that investors continue to have access to complete information about Portfolio Company fees and expenses.

The Commission estimates that 163 post-effective amendments on Form N–1A and 9 initial registration statements on Form N–1A are filed annually for fund portfolios that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies and hence do not include a fee table in their prospectuses.[113] We estimate that the hour burden of adding fee table disclosure to these registration statements will be minimal, because the fund portfolios must already compile and provide fee table information for issuers of variable annuity contracts and variable life insurance policies that include these portfolios as investment options, and hence provide information about their fees and expenses in the contract prospectuses. Therefore, we estimate that the average hour burden per registration statement for adding this fee information will be 2 hours, for either an initial registration statement or a post-effective amendment. Based on an estimated number of 10 portfolios per registration statement for a fund offering shares exclusively to separate accounts, the average hour burden per portfolio for adding this disclosure will be 0.2 hours.[114] Thus, we estimate that the amendment to Form N–1A will add 344 hours [(163 post-effective amendments + 9 initial registration statements) × 2 hours] to the previous Form N–1A annual burden of 1,145,843 hours, resulting in a new total Form N–1A annual hour burden of 1,146,187 hours.

We request your comments on the accuracy of our estimate of the burden of the amendment to Form N–1A. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits 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 Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection

[112] *See* Form N–4 Proposing Release, *supra* note 1.

[113] These estimates are based on the Commission's analysis of data from its EDGAR system on the number of initial registration statements and post-effective amendments filed on Form N–1A in 2000 by funds offering shares exclusively to one or more separate accounts. The number of initial registration statements and post-effective amendments filed on Form N–1A by these funds have been consistent in recent years.

[114] The Commission has previously estimated that 1,575 funds registered on Form N–1A are underlying portfolios for variable insurance contracts. *See* After-Tax Returns Adopting Release, *supra* note 16, 66 FR at 9012. The estimate of ten portfolios per registration statement is based on the number of portfolios currently registered (1,575) divided by the number of registrants filing post-effective amendments (163).

techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–9–98. Request for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–9–98, and be submitted to the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, Attention: Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release.

V. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Securities Exchange Act of 1934 require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. [115] The Commission has considered these factors.

The adoption and implementation of Form N–6, and the related amendment to Form N–1A, will improve efficiency and competition among issuers of variable life insurance policies. Unlike Forms N–8B–2 and S–6 that currently are used by variable life insurance issuers, Form N–6 is specifically tailored to variable life insurance. The requirements of the form focus on information that is essential to a decision to invest in a particular variable life insurance policy, and the form is intended to enhance the comparability of information about variable life insurance policies. For example, Form N–6 will require variable life insurance registrants to provide a uniform, tabular presentation of fees and charges assessed by a variable life insurance policy. The enhanced disclosure of this essential information about charges and other features of a variable life insurance policy will enable investors to become more informed about the different aspects of variable life insurance policies, and therefore will promote more efficient allocation of investors' assets, both among different variable life insurance policies and vis-à-vis other, competing types of financial products. In addition, the enhanced disclosure required by Form N–6 will promote competition among issuers of variable life insurance policies as they seek to attract these more knowledgeable investors. While investors will be better equipped to make investment decisions following the adoption of Form N–6, it is unclear whether Form N–6 will affect capital formation.

[115] 15 U.S.C. 77b(b), 78c(f), and 80a–2(c).

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)] the Chairman of the Commission has certified that proposed Form N–6 does not have a significant economic impact on a substantial number of small entities. The initial certification was attached to the Proposing Release as Appendix A. We requested comments on the certification, but received none. Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission also has certified that the amendment to Form N–1A adopted as part of this Adopting Release does not have a significant economic impact on a substantial number of small entities. Few, if any, small entities would be affected by the amendment to Form N–1A, and the amendment to Form N–1A would not have a significant economic impact. The Chairman's certification, including the reasons therefor, is attached to this release as Appendix A.

VII. Statutory Authority

The Commission is amending its rules and forms, and adding Form N–6, pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 22, 24, 26, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24, 80a–26, 80a–29, and 80a–37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Rule Amendments and Forms

List of Subjects

17 CFR Parts 230, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise § 230.134b to read as follows:

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term ''prospectus'' as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

3. Amend § 230.430 to revise the introductory text of paragraph (b) to read as follows:

§ 230.430 Prospectus for use prior to effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) shall be deemed to meet the requirements of Section 10 of the Act

(15 U.S.C. 77j) for the purpose of Section 5(b)(1) thereof (15 U.S.C. 77e(b)(1)) prior to the effective date of the registration statement, provided that:

* * * * *

4. Amend § 230.430A to revise paragraph (e) before the Note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(e) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), the references to ''form of prospectus'' in paragraphs (a) and (b) of this section and the accompanying Note shall be deemed also to refer to the form of Statement of Additional Information filed as part of such a registration statement.

* * * * *

5. Amend § 230.495 to revise paragraphs (a), (c), and (d) to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), shall consist of the facing sheet of the applicable form; a prospectus containing the information called for by such form; the information, list of exhibits, undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; and other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of the section.

(d) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), where any item of those forms calls for information not required to be included in Parts A and B (generally Part C of such form), the text of such items, including the numbers and captions thereof, together with the answers thereto, shall be filed with Parts A or B under cover of the facing sheet of the form as part of the registration statement. However, the text of such items may be omitted, provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A and B shall also be filed as part of the registration statement proper, unless incorporated by reference pursuant to § 230.411.

* * * * *

6. Revise § 230.496 to read as follows:

§ 230.496 Contents of prospectus and statement of additional information used after nine months.

In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

7. Amend § 230.497 to revise paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

9. Add § 239.17c to read as follows:

§ 239.17c Form N–6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable life insurance policies and that register under the Investment Company Act of 1940 as unit investment trusts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11d of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

Section 270.8b–11 is also issued under 15 U.S.C. 77s, 80a–8, and 80a–37.

* * * * *

11. The authority citation following § 270.8b–11 is removed.

12. Amend § 270.8b–11 to revise paragraph (b) to read as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

13. Amend § 270.8b–12 to revise paragraph (b) to read as follows:

§ 270.8b–12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

15. Form N–1A, Item 3 (referenced in §§ 239.15A and 274.11A) is amended by revising the introductory text to read as follows:

Note: The text of Form N–1A does not and this amendment will not appear in the *Code of Federal Regulations*.

Form N–1A

* * * * *

Item 3. Risk/Return Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2:

* * * * *

16. Add § 274.11d to read as follows:

§ 274.11d Form N–6, registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable life insurance policies to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17c of this chapter).

17. Revise § 274.12 to read as follows:

§ 274.12 Form N–8B–2, registration statement of unit investment trusts that are currently issuing securities.

This form shall be used as the registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates.

18. Revise Form N–8B–2 (referenced in § 274.12), General Instruction 1, to read as follows:

Note: The text of Form N–8B–2 does not and this amendment will not appear in the *Code of Federal Regulations*.

Form N–8B–2

* * * * *

General Instructions for Form N–8B–2.

* * * * *

1. Rule as to Use of Form

This form shall be used as the form for registration statements to be filed, pursuant to Section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates and unit investment trusts of which a management investment company is the sponsor or depositor.

* * * * *

19. Add Form N–6 (referenced in § 239.17c and § 274.11d) to read as follows:

Note: The text of Form N–6 will not appear in the *Code of Federal Regulations*.

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM N-6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 [ ]

Pre-Effective Amendment No. __ [ ]

Post-Effective Amendment No.__ [ ]

and/or

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 [ ]

Amendment No.__ [ ]

(Check appropriate box or boxes.)

_____

(Exact Name of Registrant)

_____

(Name of Depositor)

_____

(Address of Depositor's Principal Executive Offices) (Zip Code)

Depositor's Telephone Number, including Area Code_____

_____

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering_____

It is proposed that this filing will become effective (check appropriate box)

[ ] immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] on (date) pursuant to paragraph (a)(1) of Rule 485.

BILLING CODE 8010-91-C

If appropriate, check the following box:

☐This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' only where securities are being registered under the Securities Act of 1933.

Form N–6 is to be used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. The Commission has designed Form N–6 to provide investors with information that will assist them in making a decision about investing in a variable life insurance contract. The Commission also may use the information provided in Form N–6 in its regulatory, disclosure review, inspection, and policy-making roles.

A Registrant is required to disclose the information specified by Form N–6, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–6 unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

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General Instructions

A. Definitions

References to sections and rules in this Form N–6 are to the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the ''Investment Company Act''), unless otherwise indicated. Terms used in this Form N–6 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–6, the terms set out below have the following meanings:

''Depositor'' means the person primarily responsible for the organization of the Registrant and the person, other than the trustee or custodian, who has continuing functions or responsibilities for the administration of the affairs of the Registrant. ''Depositor'' includes the sponsoring insurance company that establishes and maintains the Registrant. If there is more than one Depositor, the information called for in this Form about the Depositor must be provided for each Depositor.

''Portfolio Company'' means any company in which the Registrant invests.

''Registrant'' means the separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a–2(a)(37)]) that offers the Variable Life Insurance Contracts.

''SAI'' means the Statement of Additional Information required by Part B of this Form.

''Securities Act'' means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

''Securities Exchange Act'' means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

''Variable Life Insurance Contract'' or ''Contract'' means a life insurance contract that provides for death benefits and cash values that may vary with the investment experience of any separate account. Unless the context otherwise requires, ''Variable Life Insurance Contract'' or ''Contract'' refers to the Variable Life Insurance Contracts being offered pursuant to the registration statement prepared on this Form.

B. Filing and Use of Form N–6

1. What Is Form N–6 Used For?

Form N–6 is used by all separate accounts that are registered under the Investment Company Act as unit investment trusts and offering Variable Life Insurance Contracts to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement;

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What Is Included in the Registration Statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, and 14), B, and C (except Items 27 (c), (k), (l), (n), and (o)), and the required signatures.

3. What Are the Fees for Form N–6?

No registration fees are required with the filing of Form N–6 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If Form N–6 is filed to register securities under the Securities Act and securities are sold to the public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. *See* section 24(f) [15 U.S.C. 80a–24f–2] and related rule 24f–2 [17 CFR 270.24f–2].

4. What Rules Apply to the Filing of a Registration Statement on Form N–6?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–6. Specific requirements concerning investment companies appear in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1–8b–32 [17 CFR 270.8b–1–270.8b–32] apply to the filing of Form N–6.

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–6.

(d) Regulation S–T [17 CFR 232.10–232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').

C. Preparation of the Registration Statement

1. Administration of the Form N–6 Requirements

(a) The requirements of Form N–6 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Variable Life Insurance Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.

(b) The prospectus disclosure requirements in Form N–6 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Variable Life Insurance Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Variable Life Insurance Contract with other Contracts.

(c) Responses to the Items in Form N–6 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Variable Life Insurance Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N–6 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–6.

2. Form N–6 Is Divided Into Three Parts

(a) *Part A.* Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Variable Life Insurance Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Variable Life Insurance Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Benefit Summary) in numerical order at the front of the prospectus, except that the information required by Item 3 (Risk/Benefit Summary: Fee Table) must precede the information required by Item 2 (Risk/Benefit Summary: Benefits and Risks) if the information in response to Item 2 exceeds five pages in length. Do not precede Items 2 and 3 with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)]. If the discussion in the Risk/Benefit Summary also responds to disclosure requirements in other items of the prospectus, a Registrant need not include additional disclosure in the prospectus that repeats the information in the Risk/Benefit Summary.

(b) *Other Information.* A Registrant may include, except in the Risk/Benefit Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Registrant may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Specifically, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. The Risk/Benefit Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N–6 to Register Multiple Contracts or Contracts Sold in Both the Group and Individual Markets.*

(i) When disclosure is provided in a single prospectus for more than one Variable Life Insurance Contract, or for a Contract that is sold in both the group and individual markets, the disclosure should be presented in a format designed to communicate the information effectively. Registrants may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Registrants or Variable Life Insurance Contracts. Registrants are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Variable Life Insurance Contracts or for Contracts sold in both the group and individual markets.

(ii) Paragraph (a) requires Registrants to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information, except that the information required by Item 3 must precede the information required by Item 2 if the information in response to Item 2 exceeds five pages in length. As a general matter, Registrants providing disclosure in a single prospectus for more than one Variable Life Insurance Contract, or for Contracts sold in both the group and individual markets, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same and Registrants must comply with the requirement that Item 3 precede Item 2 if the response to Item 2 exceeds five pages in length). For example, the prospectus may present all of the Item 2 information for several Variable Life Insurance Contracts followed by all of the Item 3 information for the Contracts, except that the information required by Item 3 must precede the information required by Item 2 if the information in response to Item 2 exceeds five pages in length. Alternatively, the prospectus may present Items 2 and 3 for each of several Contracts sequentially, except that the information required by Item 3 for any Contract must precede the information required by Item 2 for that Contract if the information in response to Item 2 for that Contract exceeds five pages in length. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus and the requirement that the information required by Item 3 must precede the information required by Item 2 if the information in response to Item 2 exceeds five pages in length.

(d) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(e) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–6

(a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included

in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S–K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0–4, 8b–23, and 8b–32 [17 CFR 270.0–4, 270.8b–23, and 270.8b–32] (additional rules on incorporation by reference for investment companies).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside front cover page of the prospectus:

(1) The Registrant's name.

(2) The Depositor's name.

(3) The types of Variable Life Insurance Contracts offered by the prospectus (*e.g.,* group, individual, scheduled premium, flexible premium).

(4) The date of the prospectus.

(5) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirement set out in General Instruction C.3.(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI and, if available, personalized illustrations of death benefits, cash surrender values, and cash values, are available, without charge, upon request, and explain how contractowners may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI and, if available, personalized illustrations; to request other information about the Contracts; and to make contractowner inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.

3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Registrant (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, DC. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 202–942–8090. State that reports and other information about the Registrant are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102.

(4) The Registrant's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.,* 8-point modern type).

Item 2. Risk/Benefit Summary: Benefits and Risks

Include, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], a concise description of the Contract, including, but not necessarily limited to, the following information:

(a) *Contract Benefits.* Summarize the benefits available under the Contract, including death benefits, withdrawal and surrender benefits, and loans.

(b) *Contract Risks.* Summarize the principal risks of purchasing a Contract, including the risks of poor investment performance, that Contracts are unsuitable as short-term savings vehicles, the risks of Contract lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences.

(c) *Portfolio Company Risks.* A statement to the effect that a comprehensive discussion of the risks of each Portfolio Company may be found in the Portfolio Company's prospectus.

Instruction. Registrants may, but are not required to, include information about the Portfolio Companies in response to this Item 2.

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

TRANSACTION FEES

Charge	When charge is deducted	Amount deducted
Maximum Sales Charge Imposed on Premiums (Load)		
Premium Taxes		
Maximum Deferred Sales Charge (Load)		
Other Surrender Fees		
Transfer Fees		

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

PERIODIC CHARGES OTHER THAN [PORTFOLIO COMPANY] OPERATING EXPENSES

Charge	When charge is deducted	Amount deducted
Cost of Insurance*: *Minimum and Maximum Charge* *Charge for a [Representative Contractowner]*		
Annual Maintenance Fee		
Mortality and Expense Risk Fees		
Administrative Fees		

*[Footnote: Include disclosure required by Instruction 3(b).]

The next table describes the [Portfolio Company] fees and expenses that you will pay periodically during the time that you own the Policy. The table shows the minimum and maximum fees and expenses charged by any of the [Portfolio Companies]. More detail concerning each [Portfolio Company's] fees and expenses is contained in the prospectus for each [Portfolio Company].

ANNUAL [PORTFOLIO COMPANY] OPERATING EXPENSES

[Expenses that are deducted from [Portfolio Company] assets]

	Minimum	Maximum
Management Fees	_____%	_____%
Distribution [and/or Service] (12b–1) Fees	_____%	_____%
Other Expenses	_____%	_____%
Total Annual [Portfolio Company] Operating Expenses	_____%	_____%

Instructions.

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

(c) A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions. A Registrant may modify or add captions if the captions shown do not provide an accurate description of the Registrant's fees and expenses.

(d) If a Registrant uses one prospectus to offer a Contract in both the group and individual variable life markets, the Registrant may include narrative disclosure in a footnote or following the tables identifying markets where certain fees are either inapplicable or waived or lower fees are charged. In the alternative, a Registrant may present the information for group and individual contracts in another format consistent with General Instruction C.3.(c).

(e) The ''When Charge is Deducted'' column must be used to show when a charge is deducted, *e.g.*, upon purchase, surrender or partial surrender, policy anniversary, monthly, or daily.

(f) Under the ''Amount Deducted'' column, the Registrant must disclose the maximum guaranteed charge unless a specific instruction directs otherwise. The Registrant should include the basis on which the charge is imposed (*e.g.*, 0.95% of average daily net assets, $5 per exchange, $5 per thousand dollars of face amount). The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges. Charges assessed on the basis of the face amount should be disclosed as the charge per $1000 of face amount.

2. *Transaction Fees.*

(a) ''Other Surrender Fees'' include any fees charged for surrender or partial surrender, other than sales charges imposed upon surrender or partial surrender.

(b) ''Transfer Fees'' include any fees charged for any transfer or exchange of cash value from the Registrant to another investment company, from one sub-account of the Registrant to another sub-account or the Depositor's general account, or from the Depositor's general account to the Registrant.

(c) If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and complete the other columns of the table for that fee.

3. *Periodic Charges Other Than [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) For ''Cost of Insurance'' and any other charges that depend on Contractowner characteristics, such as age or rating classification, the Registrant should disclose the minimum and maximum charges that may be imposed for a Contract, and the charges that may be paid by a representative Contractowner, using appropriate sub-captions. In a footnote to the table, disclose (i) that the cost of insurance or other charge varies based on individual characteristics; (ii) that the cost of insurance charge or other charge shown in the table may not be representative of the charge that a particular Contractowner will pay; and (iii) how the Contractowner may obtain more information about the particular cost of insurance or other charges that would apply to him or her.

(i) In disclosing cost of insurance or other charges that depend on Contractowner characteristics for a representative Contractowner, the Registrant should assume characteristics (*e.g.*, sex, age, and rating classification) that are fairly representative of actual or expected Contract sales, and describe these characteristics in the sub-caption for the charge (*e.g.*, ''charge for a 40-year-old non-smoking female''). The rating classification used for the representative Contractowner should be the classification with the greatest number of outstanding Contracts (or expected Contracts in the case of a new Contract), unless this rating classification is not fairly representative of actual or expected Contract sales. In this case, the Registrant should use a commonly used rating classification that is fairly representative of actual or expected Contract sales.

(ii) The Registrant may supplement this disclosure of the minimum charges, maximum charges, and charges for a representative Contractowner with additional disclosure immediately following the fee table. For example, the additional disclosure may include an explanation of the factors that affect the cost of insurance or other charge or tables showing the cost of insurance or other charge for a spectrum of representative Contractowners.

(c) ''[Annual] Maintenance Fee'' includes any Contract, account, or similar fee imposed on any recurring basis. Any non-recurring Contract, account, or similar fee should be included in the ''Transaction Fees'' table.

(d) ''Mortality and Expense Risk Fees'' may be listed separately on two lines in the table.

(e) If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual Portfolio Company Operating Expenses, add another caption describing it and complete the other columns of the table for that charge.

4. *Annual [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum expenses of any Portfolio Companies for each line item. For example, if a Registrant has five sub-accounts with management fees of 0.50%, 0.70%, 1.00%, 1.10%, and 1.25%, respectively, it should disclose that management fees range from 0.50% to 1.25%. The minimum and maximum amounts disclosed for ''Total Annual [Portfolio Company] Operating Expenses'' should be the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' for any Portfolio Company, and not the sum of the minimum and maximum amounts disclosed for the individual line items. For example, assume a Registrant has three sub-accounts. Sub-account 1 has management fees of 0.50%, 12b–1 fees of 0.25%, other expenses of 0.30%, and total expenses of 1.05%; sub-account 2 has management fees of 0.90%, 12b–1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.15%; and sub-account 3 has management fees of 1.00%, 12b–1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.25%. The minimum and maximum amounts to be disclosed in the table are: management fees—0.50%–1.00%; 12b–1 fees—0.00%–0.25%; other expenses—0.25%–0.30%; total annual [Portfolio Company] operating expenses—1.05%–1.25%. The total annual [Portfolio Company] operating expenses are the expenses of sub-accounts 1 and 3, respectively, not the sum of the minimum and maximum amounts disclosed for the individual line items, which would be 0.75%–1.55%.

(c)''Management Fees'' include investment advisory fees (including any fees based on a Portfolio Company's performance), any other management fees payable to a Portfolio Company's investment adviser or its affiliates, and administrative fees payable to a Portfolio Company's investment adviser or its affiliates that are not included as ''Other Expenses.''

(d) ''Distribution [and/or Service] (12b–1) Fees'' include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 [17 CFR 270.12b–1].

(e)(i)''Other Expenses'' include all expenses not otherwise disclosed in the table that are deducted from a Portfolio Company's assets. The amount of expenses deducted from a Portfolio Company's assets are the amounts shown as expenses in the Portfolio Company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii)''Other Expenses' do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Other Expenses'' would have been had the extraordinary expenses been included.

(f)(i) Base the percentages of ''Annual [Portfolio Company] Operating Expenses'' on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a Portfolio Company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the Portfolio Company. If the Registrant or a Portfolio Company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Annual [Portfolio Company] Operating Expenses.''

(ii) If there have been any changes in ''Annual [Portfolio Company] Operating Expenses'' that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in ''Annual [Portfolio Company] Operating Expenses'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Annual [Portfolio Company] Operating Expenses'' does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a Portfolio Company's assets.

(g) A Registrant may reflect minimum and maximum actual [Portfolio Company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

(h) A Registrant may include additional tables showing annual operating expenses separately for each Portfolio Company immediately following the required table of ''Annual [Portfolio Company] Operating Expenses.'' The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing ''Annual Fund Operating Expenses.''

5. *New Registrants.* For purposes of this Item, a ''New Registrant'' is a Registrant (or sub-account of the Registrant) that does not include in Form N–6 financial statements reporting operating results or that includes financial statements for the Registrant's (or sub-account's) initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants.

(a) Base the percentages in ''Annual [Portfolio Company] Operating Expenses'' on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of ''Other Expenses.'' Disclose in a footnote to the table that ''Other Expenses'' are based on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce any minimum or maximum [Portfolio Company] operating expense or the estimate of minimum or maximum ''Other Expenses'' (regardless of whether the arrangement has been guaranteed). If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

Item 4. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

(a) *Depositor.* Provide the name and address of the Depositor.

(b) *Registrant.* Briefly describe the Registrant. Include a statement indicating that:

(1) Income, gains, and losses credited to, or charged against, the Registrant reflect the Registrant's own investment experience and not the investment experience of the Depositor's other assets;

(2) The assets of the Registrant may not be used to pay any liabilities of the Depositor other than those arising from the Contracts; and

(3) The Depositor is obligated to pay all amounts promised to Contractowners under the Contracts.

(c) *Portfolio Companies.* Briefly describe the Registrant's sub-accounts and each Portfolio Company. For each Portfolio Company, include:

(1) Its name;

(2) Its type (*e.g.,* money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives; and

(3) Its investment adviser and any sub-investment adviser.

Instructions.

1. Do not describe sub-accounts that fund obligations of the Depositor under contracts that are not offered by this prospectus.

2. Registrants are not required to include detailed information about Portfolio Companies in the prospectus. If a Portfolio Company's name describes its type, a Registrant need not separately provide the Portfolio Company's type or a statement concerning its investment objectives.

(d) *Portfolio Company Prospectus.* State conspicuously how investors may obtain a prospectus and, if available, a fund profile, containing more complete information on each Portfolio Company.

(e) *Voting.* Concisely discuss the rights of Contractowners to instruct the Depositor on the voting of shares of the Portfolio Companies, including the manner in which votes will be allocated.

Item 5. Charges

(a) *Description.* Briefly describe all charges deducted from premiums, cash value, assets of the Registrant, or any other source (*e.g.,* sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges). Indicate whether each charge will be deducted from premium payments, cash value, the Registrant's assets, the proceeds of withdrawals or surrenders, or some other source. When possible, specify the amount of any charge as a percentage or dollar figure (*e.g.,* 0.95% of average daily net assets, $5 per exchange, $5 per thousand dollars of face amount). For recurring charges, specify the frequency of the deduction (*e.g.,* daily, monthly, annually). Identify the person who receives the amount deducted, briefly explain what is provided in consideration for the charges, and explain the extent to which any charge can be modified. Where it is possible to identify what is provided in consideration for a particular charge (*e.g.,* use of sales load to pay distribution costs, use of cost of insurance charge to pay for insurance coverage), please explain what is provided in consideration for that charge separately.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated, including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load, describe the sales load as a percentage of the applicable measure of premium payments (*e.g.,* actual premiums paid, target or guideline premiums). For Contracts with a deferred sales load, describe the sales load as a percentage of the applicable measure of premium payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (*e.g.,* surrender, partial surrender, increase or decrease in face amount). The description of any deferred

sales load should include how the deduction will be allocated among sub-accounts of the Registrant and when, if ever, the sales load will be waived (*e.g.,* if the Contract provides a free withdrawal amount).

2. Identify the factors that determine the applicable cost of insurance rate. Specify whether the mortality charges guaranteed in the contracts differ from the current charges. Identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. Disclose how the cost of insurance charge is calculated based on the cost of insurance rate, amount at risk, and any other applicable factors. If the Depositor intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance rates than they would pay under a substantially similar policy that is offered by the Depositor using different underwriting methods, state that the cost of insurance rates are higher for healthy individuals when this method of underwriting is used than under the substantially similar policy.

3. If the Contract's charge for premium or other taxes varies according to jurisdiction, identification of the range of current premium or other taxes is sufficient.

4. Identify charges that may be different in amount or method of computation when imposed in connection with, or subsequent to, increases in face amount of a Contract and briefly describe the differences.

(b) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.

(c) *Incidental Insurance Charges.* If incidental insurance benefits (as defined in Rules 6e–2 and 6e–3(T) [17 CFR 270.6e–2, 17 CFR 270.6e–3(T)]) are offered along with the Contract, state that charges also will be made for those benefits.

Item 6. General Description of Contracts

(a) *Contract Rights.* Identify the person or persons (*e.g.,* the Contractowner, insured, or beneficiary) who have material rights under the Contracts, and the nature of those rights.

(b) *Contract Limitations.* Briefly describe any provisions for and limitations on:

(1) Allocation of premiums among sub-accounts of the Registrant;

(2) Transfer of Contract values between sub-accounts of the Registrant; and

(3) Conversion or exchange of Contracts for another contract, including a fixed or variable annuity or life insurance contract.

Instruction. In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange, the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract, and how the cash value of the Contract will be affected by the conversion or exchange.

(c) *Contract or Registrant Changes.* Briefly describe the changes that can be made in the Contracts or the operations of the Registrant by the Registrant or the Depositor, including:

(1) Why a change may be made (*e.g.,* changes in applicable law or interpretations of law);

(2) Who, if anyone, must approve any change (*e.g.,* the Contractowner or the Commission); and

(3) Who, if anyone, must be notified of any change.

Instruction. Describe only those changes that would be material to a purchaser of the Contracts, such as a reservation of the right to deregister the Registrant under the Investment Company Act. Do not describe possible non-material changes, such as changing the time of day at which Contract values are determined.

(d) *Other Benefits.* Identify any other material incidental benefits in the Contracts.

(e) *Class of Purchasers.* Disclose any limitations on the class or classes of purchasers to whom the Contracts are being offered.

Item 7. Premiums

(a) *Purchase Procedures.* Describe the provisions of the Contract that relate to premiums and the procedures for purchasing a Contract, including:

(1) The minimum initial and subsequent premiums required and any limitations on the amount and the frequency of premiums that will be accepted. If there are separate limits for each sub-account, state these limits;

(2) Whether required premiums, if any, are payable for the life of the Contract or some other term;

(3) Whether payment of certain levels of premiums will guarantee that the Contract will not lapse regardless of the Contract's cash value;

(4) If applicable, under what circumstances premiums may be required in order to avoid lapse and how the amount of the additional premiums will be determined;

(5) If applicable, under what circumstances nonpayment of a required premium will not cause the Contract to lapse;

(6) If applicable, under what circumstances premiums in addition to the required premiums will be permitted; and

(7) If applicable, whether the level of the Contract's required premiums may change and, if so, how the amount of the change will be determined.

(b) *Premium Amount.* Briefly describe the factors that determine the amount of any required premiums (*e.g.,* face amount, death benefit option, and charges and expenses).

(c) *Premium Payment Plans.* Identify the premium payment plans available. Include the available payment frequencies, payment facilities such as employee payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Indicate whether the premium payment plan or schedule may be changed.

(d) *Premium Due Dates.* Briefly explain the provisions of the Contract that relate to premium due dates and the operation of any grace period, including the effect of the insured's death during the grace period.

(e) *Automatic Premium Loans.* If applicable, briefly describe the circumstances under which required premiums may be paid by means of an automatic premium loan.

(f) *Sub-Account Valuation.* Describe the procedures for valuing sub-account assets, including:

(1) An explanation of when the required premiums and additional premiums are credited to the Contract's cash value in the sub-accounts, and the basis (*e.g.,* accumulation unit value) on which premiums are credited;

(2) An explanation, to the extent applicable, that premiums are credited to the Contract's cash value on the basis of the sub-account valuation next determined after receipt of a premium;

Instruction. If, in any case, a delay occurs between the receipt of premiums and the crediting of premiums to the sub-accounts (*e.g.,* a delay during the ''free-look'' period), describe where the premiums are held in the interim.

(3) An explanation of when valuations of the assets of the sub-accounts are made; and

(4) A statement identifying in a general manner any national holidays when sub-account assets will not be valued and specifying any additional local or regional holidays when sub-account assets will not be valued.

Instruction. In responding to this paragraph, a Registrant may use a list of specific days or any other means that effectively communicates the information (*e.g.,* explaining that sub-account assets will not be valued on the days on which the New York Stock Exchange is closed for trading).

Item 8. Death Benefits and Contract Values

(a) *Death Benefits.* Briefly describe the death benefits available under the Contract.

Instruction. Include:

(i) When insurance coverage is effective;

(ii) When the death benefit is calculated and payable;

(iii) How the death benefit is calculated;

(iv) Who has the right to choose the form of benefit and the procedure for choosing the form of benefit, including when the choice is made and whether the choice is revocable;

(v) The forms the benefit may take and the form of benefit that will be provided if a particular form has not been elected; and

(vi) Whether there is a minimum death benefit guarantee associated with the Contract.

Also describe if and how a Contractowner may increase or decrease the face amount, including the minimum and the maximum amounts, any requirement of additional evidence of insurability, and whether charges, including sales load, are affected.

(b) *Charges and Contract Values.* Explain how the investment performance of the Portfolio Companies, expenses, and deduction of charges affect Contract values and death benefits.

Item 9. Surrenders, Partial Surrenders, and Partial Withdrawals

(a) *Surrender.* Briefly describe how a Contractowner can surrender a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable.

(b) *Partial Surrender and Withdrawal.* Indicate generally whether and under what circumstances partial surrenders and partial withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.

(c) *Effect of Partial Surrender and Withdrawal.* Briefly describe whether partial surrenders or partial withdrawals will affect a Contract's cash value or death benefit and whether any charge(s) will apply.

(d) *Sub-Account Allocation.* Describe how partial surrenders and partial withdrawals will be allocated among the sub-accounts.

Instruction. The Registrant should generally describe the terms and conditions that apply to these transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

(e) *Revocation Rights.* Briefly describe any revocation rights (*e.g.,* ''free-look'' provisions), including a description of how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free-look period.

Item 10. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

(a) *Availability of Loans.* A brief statement that a portion of the Contract's cash surrender value may be borrowed.

(b) *Limitations.* Any limits on availability of loans (*e.g.,* a prohibition on loans during the first contract year).

(c) *Interest.* A statement of the amount of interest charged on the loan and the amount of interest credited to the Contract in connection with the loaned amount.

(d) *Effect on Cash Value and Death Benefit.* A brief explanation that amounts borrowed under a Contract do not participate in a Registrant's investment experience and that loans, therefore, can affect the Contract's cash value and death benefit whether or not the loan is repaid. Also, a brief explanation that the cash surrender value and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.

(e) *Procedures.* The loan procedures, including how and when amounts borrowed are transferred out of the Registrant and how and when amounts repaid are credited to the Registrant.

Item 11. Lapse and Reinstatement

(a) *Lapse.* State when and under what circumstances a Contract will lapse.

(b) *Lapse Options.* Describe briefly any lapse options available. Indicate those that will not apply unless they are elected and those that will apply in the absence of an election. Indicate whether the availability of any of the lapse options is limited.

(c) *Effect of Lapse.* Describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Describe concisely how the cash value, surrender value, and death benefit will be determined. If these values and benefits will be determined in the same manner as prior to lapse, a statement to that effect is sufficient.

(d) *Reinstatement.* State under what circumstances a Contract may be reinstated. Explain any requirements for reinstatement, including charges to be paid by the Contractowner, outstanding loan repayments, and evidence of insurability.

Item 12.Taxes

(a) *Tax Consequences.* Describe the material tax consequences to the Contractowner and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.

Instruction. Discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.

(b) *Effect.* Describe the effect, if any, of taxation on the determination of cash values or sub-account values.

Item 13. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, the Registrant's principal underwriter, or the Depositor is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registrant, the ability of the principal underwriter to perform its contract with the Registrant, or the ability of the Depositor to meet its obligations under the Contracts.

Item 14. Financial Statements

If all of the required financial statements of the Registrant and the Depositor (*see* Item 24) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Part B: Information Required in a Statement of Additional Information

Item 15. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Registrant's name.

(2) The Depositor's name.

(3) A statement or statements:

(A) That the SAI is not a prospectus;

(B) How the prospectus may be obtained; and

(C) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 16. General Information and History

(a) *Depositor.* Provide the date and form of organization of the Depositor, the name of the state or other jurisdiction in which the Depositor is organized, and a description of the general nature of the Depositor's business.

Instruction. The description of the Depositor's business should be short and need not list all of the businesses in which the Depositor engages or identify the jurisdictions in which it does business if a general description (*e.g.,* ''life insurance'' or ''reinsurance'') is provided.

(b) *Registrant.* Provide the date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 [15 U.S.C. 80a–4] (*i.e.,* a separate account and a unit investment trust).

(c) *History of Depositor and Registrant.* If the Depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the Depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or

succession of Depositor during the past five years.

(d) *Ownership of Sub-Account Assets.* If 10 percent or more of the assets of any sub-account are not attributable to Contracts or to accumulated deductions or reserves (*e.g.,* initial capital contributed by the Depositor), state what percentage those assets are of the total assets of the Registrant. If the Depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(e) *Control of Depositor.* State the name of each person who controls the Depositor and the nature of its business.

Instruction. If the Depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 17. Services

(a) *Expenses Paid by Third Parties.* Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the Depositor or the Registrant, and identify those persons.

(b) *Service Agreements.* Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Registrant's securities, under which services are provided to the Registrant, unless the contract is described in response to some other item of this form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions.

1. The term ''management-related service contract'' includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following:

(a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts; and

(b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.

2. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Registrant, its Depositor, or its principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant's last three fiscal years.

(c) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the principal business address of any person who provides significant administrative or business affairs management services for the Registrant (*e.g.,* an ''Administrator,'' ''Sub-Administrator,'' ''Servicing Agent''), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Registrant's custodian and independent public accountant and describe generally the services performed by each.

(3) If the Registrant's assets are held by a person other than the Depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person.

(4) If an affiliated person of the Registrant or the Depositor, or an affiliated person of the affiliated person, acts as administrative or servicing agent for the Registrant, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this item for an administrative or servicing agent who is also the Depositor.

(5) If the Depositor is the principal underwriter of the Contracts, so state.

Item 18. Premiums

(a) *Administrative Procedures.* Discuss generally the Registrant's administrative rules applicable to premium payments, to the extent that they are not discussed in the prospectus.

Instruction. Examples include information regarding any condition applicable to changes in premium payment schedules, any limitations on prepayments of premiums, any relevant rules for classifying payments made other than in response to a bill or in an amount other than the amount billed for, etc.

(b) *Automatic Premium Loans.* If the contract provides an automatic premium loan option, describe the option, including the circumstances under which it will be used to pay a required premium and whether, and how, interest will be charged on the loan. Describe any effect not described in the prospectus that an automatic premium loan could have on the Contract (*e.g.,* how automatic premium loans affect cash value).

Item 19. Additional Information About Operation of Contracts and Registrant

(a) *Incidental Benefits.* To the extent not described in the prospectus, explain the manner in which the purchase or operation of other incidental benefits affects the exercise of rights and the determination of benefits under the Contract such as whether the Contract or any rider provides for a change of insured or for all or a portion of the death benefit to be paid while the insured is still alive.

(b) *Surrender and Withdrawal.* To the extent not described in the prospectus, explain the Contract's surrender and withdrawal provisions.

(c) *Material Contracts Relating to the Registrant.* Disclose any material contract relating to the operation or administration of the Registrant.

Item 20. Underwriters

(a) *Identification.* Identify each principal underwriter (other than the Depositor) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Depositor, or any affiliated person of the Registrant or the Depositor, identify how they are affiliated (*e.g.,* the principal underwriter is controlled by the Depositor).

(b) *Offering and Commissions.* For each principal underwriter distributing Contracts of the Registrant, state:

(1) Whether the offering is continuous; and

(2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.

(c) *Other Payments.* With respect to any payments made by the Registrant to an underwriter of or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:

(1) Payments made through deduction from premiums paid at the time of sale of the Contracts; or

(2) Payments made from cash values upon full or partial surrender of the Contracts or from an increase or decrease in the face amount of the Contracts.

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

(d) *Commissions to Dealers.* State the commissions paid to dealers as a percentage of premiums.

Item 21. Additional Information About Charges

(a) *Sales Load.* Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

(b) *Special Purchase Plans.* Describe any special purchase plans (*e.g.,* group life insurance plans) or methods that reflect scheduled variations in, or elimination of, any applicable charges (*e.g.,* group discounts, waiver of deferred sales loads for a specified percentage of cash value, investment of proceeds from another Contract, exchange privileges, employee benefit plans, or the terms of a merger, acquisition, or exchange offer made pursuant to a plan of reorganization). Identify each class of individuals or transactions to which the plans or methods apply, including officers, directors, members of the board of managers, or employees of the Depositor, underwriter, Portfolio Companies, or investment adviser to Portfolio Companies, and the amount of the reductions, and state from whom additional information may be obtained. For special purchase plans or methods that reflect variations in, or elimination of, charges other than according to a fixed schedule, describe the basis for the variation or elimination (*e.g.,* the size of the purchaser, a prior existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(c) *Underwriting Procedures.* Briefly identify underwriting procedures used in connection with the Contract and any effect of different types of underwriting on the charges in the Contract. Specify the basis of the mortality charges guaranteed in the Contracts.

(d) *Increases in Face Amount.* Describe in more detail the charges assessed on increases in face amount, including the procedures used following an increase in face amount to allocate cash values and premium payments between the original Contract and incremental Contracts.

Item 22. Lapse and Reinstatement

To the extent that the prospectus does not do so, describe the lapse and reinstatement provisions of the Contract. Include a discussion of any time limits that apply, how the charge to reinstate is determined, and any other conditions that apply to reinstatement. Describe the features of any lapse options not described in the prospectus, including any factors that will determine the amount or duration of the insurance coverage, and the limitations and conditions on availability of each lapse option. Identify which contract transactions (*e.g.,* loans, partial withdrawals and surrenders, transfers) are available while the Contract is continued under a lapse option. Indicate when limits on contract transactions are different from those that apply prior to lapse.

Item 23. Loans

(a) *Loan Provisions.* To the extent that the prospectus does not do so, explain the loan provisions of the Contract.

(b) *Amount Available.* State how the amount available for a policy loan is calculated.

(c) *Effect on Cash Value and Sub-Accounts.* Describe how loans and loan repayments affect cash value and how they are allocated among the sub-accounts.

(d) *Interest.* Describe how interest accrues on the loan, when it is payable, and how interest is treated if not paid. Explain how interest earned on the loaned amount is credited to the Contract and allocated to the sub-accounts.

(e) *Other Effects.* Describe any other effect not already described in the prospectus that a loan could have on the Contract (*e.g.,* the effect of a Contract loan in excess of cash value).

Item 24. Financial Statements

(a) *Registrant.* Provide financial statements of the Registrant.

Instruction. Include, in a separate section, the financial statements and schedules required by Regulation S–X [17 CFR 210]. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6–07 of Regulation S–X [17 CFR 210.6–07];

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6–09 of Regulation S–X [17 CFR 210.6–09] for the two most recent fiscal years.

(b) *Depositor.* Provide financial statements of the Depositor.

Instructions.

1. Include, in a separate section, the financial statements and schedules of the Depositor required by Regulation S–X. If the Depositor would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N–3, N–4, or N–6, its financial statements may be prepared in accordance with statutory requirements. The Depositor's financial statements must be prepared in accordance with generally accepted accounting principles if the Depositor prepares financial information in accordance with generally accepted accounting principles for use by the Depositor's parent, as defined in Rule 1–02(p) of Regulation S–X [17 CFR 210.1–02(p)], in any report under sections 13(a) and 15(d) of the Securities Exchange Act [15 U.S.C. 78m(a) and 78*o*(d)] or any registration statement filed under the Securities Act.

2. All statements and schedules of the Depositor required by Regulation S–X, except for the consolidated balance sheets described in Rule 3–01 of Regulation S–X [17 CFR 210.3–01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Depositor is available, without charge, upon request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. Notwithstanding Rule 3–12 of Regulation S–X [17 CFR 210.3–12], the financial statements of the Depositor need not be more current than as of the end of the most recent fiscal year of the Depositor. In addition, when the anticipated effective date of a

registration statement falls within 90 days subsequent to the end of the fiscal year of the Depositor, the registration statement need not include financial statements of the Depositor more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Depositor unless the audited financial statements for such fiscal year are available. The exceptions to Rule 3–12 of Regulation S–X contained in this Instruction 3 do not apply when:

(i) The Depositor's financial statements have never been included in an effective registration statement under the Securities Act of a separate account that offers variable annuity contracts or variable life insurance contracts; or

(ii) The balance sheet of the Depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000; or

(iii) The balance sheet of the Depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the Depositor may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Item 25. Performance Data

(a) *Calculation.* If the Registrant advertises any performance data, include an explanation of how performance is calculated, whether the data reflects all charges, the nature of any charges that are not reflected in the data, and the effect on performance of excluding those charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

(b) *Quotation.* For each sub-account for which the Registrant advertises any performance data, furnish:

(1) a quotation of performance, computed by each of the methods used in advertising; and

(2) the length of and the last day in the period used in computing the quotation.

Item 26. Illustrations

The Registrant may, but is not required to, include a table of hypothetical illustrations of death benefits, cash surrender values, and cash values in either the prospectus or the SAI. The following standards should be used to prepare any table of hypothetical illustrations that is included in the prospectus or the SAI:

(a) *Narrative Information.* The illustrations should be preceded by a clear and concise explanation, including (i) a description of the expenses reflected in the illustrations; (ii) that the illustrations are based on assumptions about investment returns and Contractowner characteristics; (iii) the circumstances under which actual results for a particular purchaser of the Contract would differ from the illustrations; and (iv) whether personalized illustrations are available and, if available, how they may be obtained.

(b) *Headings.* The headings should contain the following information: sex, age, rating classification (*e.g.,* nonsmoker, smoker, preferred, or standard), premium amount and payment schedule, face amount, and death benefit option.

(c) *Premiums, Ages.* Premium amounts used in the illustrations should be representative of the actual or expected typical premium amount. The typical premium amount may be based on the average or median premium amount or some other reasonable basis that results in a typical premium amount that is fairly representative of actual or expected Contract sales. Ages used in the illustrations should be representative of actual or expected Contract sales.

(d) *Rating Classifications.* Illustrations should be shown for the rating classification with the greatest number of outstanding Contracts (or expected Contracts in the case of a new Contract), unless this rating classification is not fairly representative of actual or expected Contract sales. In this case, illustrations should be shown for a commonly used rating classification that is fairly representative of actual or expected Contract sales.

(e) *Years.* Illustrated values should be provided for Contract years one through ten, for every five years beyond the tenth Contract year, and for the year of Contract maturity.

(f) *Illustrated Values.* Death benefits and cash surrender values should be illustrated at three rates of return and two levels of charges (described in paragraphs (g) and (i)). The Registrant may also illustrate cash values, but cash values must be accompanied by corresponding cash surrender values. All illustrated values should be determined as of the end of the Contract year.

(g) *Rates of Return.* The Registrant should use gross rates of return of 0%, 6%, and one other rate not greater than 12%. Additional gross rates of return no greater than 12% may be used. Explain that the gross rates of return used in the illustrations do not reflect the deductions of the charges and expenses of the Portfolio Companies.

(h) *Portfolio Company Charges.* Portfolio Company management fees and other Portfolio Company charges and expenses should be reflected using the arithmetic average of those charges and expenses incurred during the most recent fiscal year for all of the available Portfolio Companies or any materially greater amount expected to be incurred during the current fiscal year. In determining charges and expenses incurred during the most recent fiscal year or expected to be incurred during the current fiscal year, include amounts that would have been incurred absent expense reimbursement or fee waiver arrangements.

(i) *Other Charges.* Values should be illustrated using both current and guaranteed maximum charges at the 0% rate of return, the 6% rate of return, and one other rate of return no greater than 12%. Illustrated values should accurately reflect all charges deducted under the Contract (*e.g.,* mortality and expense risk, administrative, cost of insurance) as well as the actual timing of the deduction of those charges (*e.g.*, daily, monthly, annually). For example, for a Contract with a mortality and expense risk charge that is deducted from sub-account assets at a given annual rate, the illustrated values will be lower if the charge is deducted from assets on a daily basis rather than on a monthly or annual basis.

(j) *Additional Information.* Subject to the requirement set out in General Instruction C.3.(b), additional information may be shown as part of the illustrations, provided that it is consistent with the standards of this Item 26.

Part C: Other Information

Item 27. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless

otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Board of Directors Resolution.* The resolution of the board of directors of the Depositor authorizing the establishment of the Registrant.

(b) *Custodian Agreements.* All agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration.

(c) *Underwriting Contracts.* Underwriting or distribution contracts between the Registrant or Depositor and a principal underwriter and agreements between principal underwriters or the Depositor and dealers.

(d) *Contracts.* The form of each Contract, including any riders or endorsements.

(e) *Applications.* The form of application used with any Contract provided in response to (d) above.

(f) *Depositor's Certificate of Incorporation and By-Laws.* The Depositor's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.

(g) *Reinsurance Contracts.* Any contract of reinsurance related to a Contract.

(h) *Participation Agreements.* Any participation agreement or other contract relating to the investment by the Registrant in a Portfolio Company.

(i) *Administrative Contracts.* Any contract relating to the performance of administrative services in connection with administering a Contract.

(j) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(k) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Depositor.

(l) *Actuarial Opinion.* If illustrations are included in the registration statement as permitted by Item 26, an opinion of an actuarial officer of the Depositor as to those illustrations indicating that:

(1) the illustrations of cash surrender values, cash values, death benefits, and/or any other values illustrated are consistent with the provisions of the Contract and the Depositor's administrative procedures;

(2) the rate structure of the Contract has not been designed, and the assumptions for the illustrations (including sex, age, rating classification, and premium amount and payment schedule) have not been selected, so as to make the relationship between premiums and benefits, as shown in the illustrations, appear to be materially more favorable than for any other prospective purchaser with different assumptions; and

(3) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the Contract is sold.

(m) *Calculation.* If illustrations are included in the registration statement as permitted by Item 26, one sample calculation for each item illustrated, *e.g.*, cash surrender value, cash value, and death benefits, showing how the illustrated values for the fifth Contract year have been calculated. Demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the annual investment returns of the sub-accounts, and how the periodic deductions for cost of insurance and other Contract charges were made to arrive at the illustrated values. Describe how the calculation would differ for other years.

(n) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(o) *Omitted Financial Statements.* Financial statements omitted from Item 24.

(p) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, Depositor, underwriter, or initial Contractowners and written assurances from the Depositor or initial Contractowners that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(q) *Redeemability Exemption.* Disclosure (if not provided elsewhere in the registration statement) of insurance procedures for which the Registrant and Depositor claim any exemption pursuant to rule 6e–2(b)(12)(ii) or rule 6e–3(T)(b)(12)(iii) under the Investment Company Act.

Item 28. Directors and Officers of the Depositor

Provide the following information about each director or officer of the Depositor:

(1) Name and Principal Business Address	(2) Positions and Offices with Depositor

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 29. Persons Controlled by or Under Common Control With the Depositor or the Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Depositor or the Registrant. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Registrant and the Depositor in the list or diagram and show the relationship of each company to the Registrant and Depositor and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or

unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

(a) *Other Activity.* State the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) *Management.* Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and Principal Business Address	(2) Positions and Offices with Underwriter

Instruction. If a principal underwriter is the Depositor or an affiliate of the Depositor, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) *Compensation From the Registrant.* Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1) Name of Principal Underwriter	(2) Net Underwriting Discounts and Commissions	(3) Compensation on Events Occasioning the Deduction of a Deferred Sales Load	(4) Brokerage Commissions	(5) Other Compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Exclude information about bona fide contracts with the Registrant or its Depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its Depositor in the ordinary course of business.

3. Exclude information about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

4. Exclude information about payments made under any agreement whereby another person contracts with the Registrant or its Depositor to perform as custodian or administrative or servicing agent.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a30(a)] and the rules under that section.

Item 33. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions.

1. The instructions to Item 17 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $5,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation

Provide a representation of the Depositor that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Depositor.

Signatures

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____on the day of _____, ____(Year)

_____
Registrant

By _____
(Signature and Title)

By _____
(Depositor)

By _____
(Name of officer of Depositor) _____
(Title)

Instruction. If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature) (Title) (Date) _____

Dated: April 12, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[Note: Appendix A to the preamble will not appear in the *Code of Federal Regulations*]

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission, on information and belief, hereby certify, pursuant to 5 U.S.C. 605(b), that Form N–6 and the related amendment to Form N–1A would not have a significant economic impact on a substantial number of small entities. Form

N–6 would be used by insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies for registration under the Investment Company Act of 1940 and offer securities under the Securities Act of 1933.

Form N–6 generally would not have a significant economic impact on small entities. Few, if any, registered insurance company separate accounts have net assets of less than $50,000,000, when separate account assets are aggregated with the assets of the sponsoring insurance company. As a result, few, if any, small entities within the definitions contained in rule 0–10 under the Investment Company Act and rule 157 under the Securities Act would be affected by Form N–6.

The amendment to Form N–1A, the registration form for open-end management investment companies, or mutual funds, would eliminate the current exclusion from the fee table requirement of Form N–1A for mutual funds that offer their shares exclusively as investment options for variable annuity contracts and variable life insurance policies, and would require that these funds include a fee table in their prospectuses.

Few, if any, small entities within the definition provided in rule 0–10 under the Investment Company Act of 1940 would be affected by the amendment to Form N–1A. Moreover, the economic impact of the amendment would not be significant. A mutual fund that offers its shares exclusively as investment options for variable annuity contracts and variable life insurance policies would already provide fee table information to any issuer of variable annuity contracts or variable life insurance policies that includes such a mutual fund as an investment option, in order for the issuer to include this information in the prospectus for the variable annuity contract or variable life insurance policy. Accordingly, the amendment to Form N–1A would not have a significant economic impact on a substantial number of small entities.

Dated: April 11, 2002.

Harvey L. Pitt,
Chairman.

[FR Doc. 02–9457 Filed 4–22–02; 8:45 am]

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Federal Register

Tuesday,
April 23, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 239 and 274

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8087; IC–25521; File No. S7–07–02]

RIN 3235–AI39

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing revisions to the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The proposed amendments would revise the format of the fee table to require disclosure of the range of expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. These and other proposed technical amendments to the fee table will conform the treatment of fund expenses in the registration form for variable annuities to that in the registration form for variable life insurance policies that we are adopting in a companion release today, and the registration form used by mutual funds.

DATES: Comments must be received on or before June 14, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–07–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, Katy Mobedshahi, Attorney, or Paul G. Cellupica, Assistant Director, (202) 942–0721, Office of Disclosure and Insurance Product Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Form N–4 [17 CFR 239.17b; 17 CFR 274.11c], the form used by separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'').

I. Discussion

A. Disclosure of Range of Portfolio Company Expenses

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act. Form N–4 requires that a prospectus for a variable annuity contract include a fee table, similar to the fee table required by Form N–1A for mutual funds.[2] The fee table of Form N–4 requires disclosure of the costs and expenses that a variable annuity contractowner will bear, directly or indirectly. This includes the annual operating expenses for each mutual fund in which a contractowner may invest (''Portfolio Company'').[3]

Our proposed amendments would conform the treatment of Portfolio Company expenses in Form N–4 to that in newly adopted Form N–6. The Commission has today adopted Form N–6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, to be used by these separate accounts to register under the Investment Company Act and to offer their securities under the Securities Act.[4] Unlike the fee table in Form N–4, which requires disclosure of the expenses for each Portfolio Company, the fee table of Form N–6 requires disclosure of the range of expenses for all of the Portfolio Companies.[5] Because variable life fees and charges are complex, and because variable life policies frequently offer numerous Portfolio Companies as investment options, we concluded that investors could be overwhelmed by information if the fees and charges for each Portfolio Company were required to be separately stated in the Form N–6 fee table.[6]

In proposing Form N–6, we noted that we expected to reconsider the disclosure of Portfolio Company fees and charges in variable annuity prospectuses.[7] We now believe that the approach adopted in Form N–6 to disclosing the fees and expenses of Portfolio Companies available through a variable life insurance policy may be appropriate in the variable annuity context as well. Therefore, we are proposing to amend the fee table of Form N–4 to require disclosure of the range of expenses for all of the Portfolio Companies offered through the separate account, rather than separate disclosure of the expenses of each Portfolio Company.[8]

We believe that use of a range of Portfolio Company expenses is warranted in order to simplify fee tables for variable annuity contracts, which have grown longer and more complex. As with variable life insurance policies, the number of investment options available through a typical variable annuity contract has expanded considerably in recent years.[9] Variable annuity fee tables have also become more complicated in recent years because insurers have increasingly offered variable annuity contracts with a variety of so-called ''unbundled'' optional features, each of which has a separate charge.[10]

In addition, our proposed change will conform the treatment of Portfolio Company expenses in the fee table of the variable annuity prospectus to that in the fee table of the variable life

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] Item 3(a) of Form N–4.

[3] Variable annuity separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different Portfolio Company. Each contractowner selects the sub-accounts, and thus the Portfolio Companies, in which his or her account value is invested.

[4] Investment Company Act Release No. IC–25522 (April 12, 2002) (''Form N–6 Adopting Release'').

[5] Form N–6 Adopting Release, *supra* note 4, at Section II.A.2., ''Risk/Benefit Summary: Fee Table (Item 3); Portfolio Company Fees and Charges.''

[6] *Id.*

[7] Investment Company Act Release No. 23066 (March 13, 1998) [63 FR 13988, 13993 n. 48 (March 23, 1998)] (Form N–6 Proposing Release).

[8] Proposed Item 3(a).

[9] Rick Carey, *9-Month Variable Annuity Sales Off 20% From Last Year,* National Underwriter Life & Health/Financial Services Edition, Dec. 3, 2001, at 14 (estimating that average number of funds available in a variable annuity contract increased from five in 1988 to 33 in 2001).

[10] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity,* National Underwriter Life & Health/Financial Services Edition, Sept. 3, 2001, at 22 (describing growth in optional riders on both variable annuities and variable life insurance).

insurance prospectus. We note that one of the commenters on Form N–6 urged that the Commission adopt a uniform approach to disclosure of Portfolio Company expenses in Form N–4 and Form N–6. We agree with this commenter's argument that requirements to report Portfolio Company expenses differently in variable annuity and variable life insurance registration statements would complicate the process of preparing registration statements without improving the quality of disclosure.[11]

We emphasize that investors in variable annuity contracts will continue to have access to information about the fees and expenses of each Portfolio Company. Prior to adoption of Form N–6, a mutual fund that offers its shares exclusively to insurance company separate accounts as investment options for variable life insurance policies and variable annuity contracts was permitted to omit the fee table from its prospectus.[12] However, in connection with the adoption of Form N–6, we have also amended Form N–1A, the form used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act, to eliminate this exclusion from the fee table requirement for mutual funds that offer their shares exclusively to separate accounts. Because this exclusion has been eliminated, investors in variable annuity contracts will now have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company.[13] Our proposed amendments to the fee table of Form N–4 would require a statement referring investors to the Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses.

We are also proposing to permit registrants to continue to include disclosure of the fees and expenses for each Portfolio Company in the fee table of Form N–4, in addition to the range of expenses for the Portfolio Companies. This approach parallels the fee table of Form N–6 and would provide registrants with the flexibility to include this detailed information when they determine that it would be helpful, and not overwhelming, to investors.[14]

Like current Forms N–4 and N–1A, and newly adopted Form N–6, the proposed amendments would require line item disclosure of subcategories of Portfolio Company expenses, including management fees, distribution (12b–1) fees, and other expenses, as well as total annual Portfolio Company operating expenses. We request comment on whether this breakdown is appropriate or whether there should be more or fewer line items. We also request comment on other alternatives to the disclosure of Portfolio Company expenses in the fee table of Form N–4.

B. Other Fee Table Changes To Conform to Forms N–1A and N–6

We are proposing other amendments to conform the format and instructions for the fee table of Form N–4 more closely to its counterparts in Forms N–1A and N–6. These changes are discussed below.

Expense Reimbursement and Fee Waiver Arrangements. We are proposing to require that Portfolio Company operating expenses be disclosed before expense reimbursement and fee waiver arrangements. Expenses after reimbursement or waiver could be disclosed in a footnote.[15]

Expense Example. Currently, Form N–4 requires the fee table to provide an example of the cumulative amount of separate account and Portfolio Company fees and expenses incurred over one, three, five, and ten year periods, based on a hypothetical investment of $1,000 and an annual 5% return.[16] Expense information in the example must be shown for each Portfolio Company offered through the contract.[17] Because the proposed amendments to the Form N–4 fee table will require disclosure of the range of Portfolio Company expenses, rather than the expenses for each Portfolio Company offered through the contract, we are proposing to amend the expense example and the accompanying instructions, so that only an expense example based on the maximum expenses charged by any of the Portfolio Companies would be required.[18] An additional example, based on the minimum expenses charged by any of the Portfolio Companies, could also be provided.[19] In lieu of providing examples based on the maximum and minimum expenses charged by the Portfolio Companies offered through the contract, a registrant would be permitted to include expense examples for each of the Portfolio Companies, as Form N–4 currently requires.[20]

The proposed amendments would also modify the format of the expense example to conform to the format of the

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[11] Letter from Nationwide Life Insurance Company to Jonathan G. Katz, Secretary, Securities and Exchange Commission (''SEC'') (June 29, 1998) (available in File No. S7–9–98). *See also* Letter from W. Thomas Conner, Vice President, Regulatory Affairs, National Association for Variable Annuities, to Paul F. Roye, Director, and Susan Nash, Senior Assistant Director, Division of Investment Management, SEC (Oct. 6, 1999) (available in File No. S7–07–02) (recommending that Commission adopt range of Portfolio Company expenses approach in Form N–4).

[12] *See* Item 3 of Form N–1A; Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772 (Jan. 31, 1989)] (adopting Form N–4 fee table and eliminating the fee table requirement in Form N–1A for Portfolio Companies offering shares exclusively to insurance company separate accounts); Investment Company Act Release No. 16482 (July 15, 1988) [53 FR 27872, 27874 (July 25, 1988)] (proposing Form N–4 fee table and elimination of Form N–1A fee table requirement for Portfolio Companies offering shares exclusively to insurance company separate accounts).

[13] Investors in variable annuity contracts receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies they have selected.

[14] Proposed Instruction 23 to Item 3(a); Instruction 4(h) to Item 3 of Form N–6.

[15] Proposed Instructions 21(a) & 22 to Item 3(a). *See* Instructions 3(d)(i) and 3(e) to Item 3 of Form N–1A; Instructions 4(f)(i) and 4(g) to Item 3 of Form N–6. Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to add two lines to the fee table: one line showing the amount of the reimbursement or waiver, and a second line showing the fund's net expenses after subtracting the reimbursement or waiver from the total fund operating expenses. *See* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998). We intend that the staff construe the proposed amendments to the fee table requirements of Form N–4, if adopted, consistent with the approach taken under Form N–1A, to permit the addition of one line to the fee table showing the range of net Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses. This additional line would be placed immediately under the ''Total Annual [Portfolio Company] Operating Expenses'' line of the fee table and would have to use appropriate descriptive captions. A footnote to the fee table would be required to describe the contractual arrangement.

[16] Item 3(a) and Instruction 21 to Item 3(a) of Form N–4.

[17] Instruction 5 to Item 3(a) of Form N–4.

[18] Proposed Instruction 24(b) to Item 3(a). Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to take account of the reimbursement or waiver in calculating the example required by the fee table of Item 3, but only for the duration of the contractual limitation. Funds may not assume that the reimbursement or waiver will continue for periods subsequent to the contractual limitation period in calculating expenses shown in the example. *Cf.* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) (permitting funds with fees that are subject to a contractual limitation that requires reimbursement or waiver to add two lines to the fee table showing the amount of the reimbursement or waiver and total net expenses). We intend that the staff construe the proposed amendments to the expense example requirements of Form N–4, if adopted, consistent with the approach it has taken with the expense example of the fee table of Form N–1A, to permit expense examples to take into account contractual limitations on Portfolio Company operating expenses that require reimbursement or waiver of expenses, but only for the period of the contractual limitation.

[19] Proposed Instruction 24(b) to Item 3(a).

[20] *Id.*

example in Form N–1A, by prescribing that a narrative explanation precede the example.[21] The proposed amendments also would increase the initial hypothetical investment in the example from $1,000 to $10,000, the amount currently used in the expense example in Form N–1A.[22] The increase reflects the fact that the typical amount invested in a variable annuity far exceeds $1,000,[23] while still providing a round figure that will facilitate an investor's computation of his or her own estimated expenses based on the investor's actual investment.

We request comment on alternative formats for the expense example in Form N–4.

Fee Table Narrative. Currently, Form N–4 requires a brief narrative immediately following the fee table, explaining the purpose of the fee table and cross-referencing the Portfolio Company prospectuses.[24] We propose to require narrative explanations to precede each section of the fee table, in order to better help investors understand the information about fees and charges shown in that section. These would be similar to the narrative explanations required by the Form N–6 fee table.[25] A registrant would be able to modify a narrative explanation if the explanation contains comparable information to that shown.[26] We request comment on whether the proposed narrative explanations will be useful to investors in understanding the types of fees and charges disclosed in the fee table.

Fee Table Captions. The proposed amendments would add a caption to the Portfolio Company expenses section of the fee table for ''Distribution [and/or Service] (12b–1) Fees,'' which includes any distribution and other expenses a fund pays under a rule 12b–1 plan. This addition would reflect the increasing use of such plans in recent years by funds that serve as investment options for variable annuity contracts.[27] In addition, we propose to delete the current instruction that permits the use of subcategories under the caption for ''Other Expenses'' in the Portfolio Company expenses section of the fee table.[28] We believe that these subcategories would have extremely limited relevance in the context of a table showing the range of expenses for all Portfolio Companies because different Portfolio Companies would likely have different subcategories of ''Other Expenses.''

We also propose to amend the instructions to clarify that a registrant may modify or add captions in the fee table if the captions shown do not provide an accurate description of its fees and expenses, which parallels a similar instruction in the Form N–6 fee table.[29] This instruction recognizes that, following the enactment of the National Securities Markets Improvement Act of 1996, insurers have increased flexibility to structure variable annuity charges, subject to a requirement that those charges be reasonable in the aggregate.[30] We request comment on whether the captions of the fee table of Form N–4 are appropriate and whether additional captions or sub-captions should be required.

Requirement to Disclose All Fees and Charges. Currently, the fee table of Form N–4 requires that registrants disclose all transaction fees, whether or not a specific caption is provided for a charge in the fee table.[31] We are proposing to add an instruction, similar to an instruction in Form N–6, requiring registrants also to disclose all recurring fees and charges.[32] We believe that complete disclosure of all fees and charges that a contractowner may pay is appropriate. We are not aware of any mechanism to distinguish between charges for optional features that ought to be included in the fee table because they are expected to be selected by most or a majority of investors, or by ''typical'' investors, and charges for optional features that are expected to be less popular and hence arguably could be omitted from the fee table. We note that in recent years insurers have increasingly offered variable annuities with a variety of so-called ''unbundled'' optional features, each of which has a specific charge.[33] This trend toward unbundling of features and charges would make the task of separating out those optional features that will be selected by a ''typical'' investor much more difficult. We request comment on whether there should be any limitations on the charges required to be disclosed in the fee table.

Requirement to Disclose Maximum Charges. The proposed amendments to the fee table would add an instruction requiring disclosure of the maximum guaranteed charge for each item unless a specific instruction directs otherwise.[34] In addition, registrants would be permitted, but not required, to disclose current charges in the fee table so long as the current charge disclosure is no more prominent than, and does not obscure or impede understanding of, the required maximum guaranteed charge disclosure. Registrants would also be able to include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in a charge. This instruction parallels a similar instruction in Form N–6.[35] We request comment on this approach.

II. General Request for Comments

The Commission requests comment on the proposed changes to Form N–4, including suggested changes to related provisions of rules and forms that the Commission is not proposing to amend. Are there additional changes that we should make to conform the Form N–4 fee table to the fee tables in Forms N–1A and N–6?

Our proposed amendments are intended to conform the fee tables of Forms N–4 and N–6. If we adopt changes to our Form N–4 proposals in response to comments, we intend to adopt conforming changes to Form N–6. We therefore request that commenters on our proposed amendments to the fee table of Form N–4 address how their comments would apply to the fee table of Form N–6, and whether a different approach to any aspect of fee and expense disclosure is warranted in Form N–6 because of the differences between variable life insurance and variable annuities. We also request that commenters address the costs and benefits of any conforming change that

[21] Proposed Item 3(a). *See* Item 3 of Form N–1A.

[22] Proposed Item 3(a). *See* Item 3 of Form N–1A.

[23] *See* R. James Doyle, VARDS, and Timothy Pfeifer, Milliman USA, Inc., Variable Annuity Feature and Benefit Utilization Study 7–8 (Feb. 2002) (average initial premium for a variable annuity contract is $61,411).

[24] General Instruction 1 to Item 3(a) of Form N–4.

[25] Proposed Item 3(a) and Proposed General Instruction 1 to Item 3(a). *See* Item 3 and Instruction 1(b) to Item 3 of Form N–6.

[26] Proposed General Instruction 1 to Item 3(a). *See* Instruction 1(b) to Item 3 of Form N–6.

[27] *See* Letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Gary Hughes, Chief Counsel, Securities and Banking, American Council of Life Insurance, Paul Schott Stevens, General Counsel, Investment Company Institute, and Mark J. Mackey, President & Chief Executive Officer, National Association for Variable Annuities (May 30, 1996) (describing issues raised by use of 12b–1 plans by funds underlying variable insurance products).

[28] Instruction 17(b) to Item 3(a) of Form N–4.

[29] Proposed General Instruction 3 to Item 3(a). *See* Instruction 1(c) to Item 3 of Form N–6.

[30] 15 U.S.C. 80a-26; 15 U.S.C. 80a–27; National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), Section 205; S. Rep. No. 293, 104th Cong., 2d Sess. 22 (1996); H. Rep. No. 622, 104th Cong., 2d Sess. 45–46 (1996).

[31] Instruction 12 to Item 3(a) of Form N–4.

[32] Proposed Instruction 15 to Item 3(a). *See* Instruction 3(e) to Item 3 of Form N–6.

[33] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity, supra* note 10 (describing growth in optional riders).

[34] Proposed General Instruction 5 to Item 3(a).

[35] *See* Instruction 1(f) to Item 3 of Form N–6.

they recommend we make to the fee table of Form N–6.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [5 U.S.C. 801 *et seq.*], the Commission also is requesting information regarding the potential effect of the proposed amendments to Form N–4 on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities.

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act.[36] Form N–4 requires that a prospectus for a variable annuity contract include a fee table showing the costs and expenses that a variable annuity contractowner will bear, directly or indirectly, including the annual operating expenses for each mutual fund in which a contractowner may invest (''Portfolio Company''). The proposed amendments would amend the fee table in the prospectus of Form N–4 to require registrants to disclose the range of fees and expenses for all of the Portfolio Companies offered, rather than separately disclosing the fees and expenses of each Portfolio Company. Registrants would still be permitted to include additional disclosure of the fees and expenses of each Portfolio Company offered through a sub-account of the registrant. Use of a range of Portfolio Company expenses is warranted in order to streamline and improve fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years as the number of investment options available through a typical variable annuity contract has expanded. Under the proposed amendments, in order to treat Portfolio Company expense disclosure consistent with Form N–1A and Form N–6, registrants would be also required to show total Portfolio Company annual expenses without the effect of any fee waiver or expense reimbursement arrangements, although expenses after reimbursement or waiver could be disclosed in a footnote to the fee table.

The proposed amendments would also make other technical changes conforming the format and the instructions for the fee table of Form N–4 more closely to the fee tables in Forms N–6 and N–1A. These amendments include the following:

- Revising the expense example in the fee table, to require only an example based on the maximum expenses charged by any Portfolio Company, for purposes of consistency with disclosure of the range of Portfolio Company expenses in the fee table.
- Making other modifications to the format of the example, for purposes of consistency with the format of the expense example in Form N–1A.
- Prescribing narrative explanation to precede each section of the fee table, in order to help investors understand the information about fees and charges presented in that section and thereby improve transparency of fee disclosure.
- Requiring a caption in the fee table for 12b–1 distribution expenses, and adding an instruction permitting registrants to modify or add captions in the fee table, as appropriate. These changes would update the fee table of Form N–4 to reflect the increased use of 12b–1 plans by funds that serve as investment options for variable annuity contracts and the increased flexibility provided to insurers by the National Securities Markets Improvement Act of 1996 in structuring variable annuity charges, and would conform the fee table of Form N–4 more closely to the fee table of Form N–6.
- Adding an instruction requiring disclosure of all recurring fees and charges other than annual Portfolio Company operating expenses, in order to improve transparency of fee disclosure, and to make Form N–4 consistent with Form N–6.
- Adding an instruction requiring disclosure of maximum guaranteed charges for each item, but also permitting disclosure of current charges, in order to improve transparency of fee disclosure, and to make Form N–4 consistent with Form N–6.

A. Benefits

We believe that the proposed amendments to Form N–4 will benefit investors by making the variable annuity prospectus easier for investors to understand. As noted above, disclosure of a range of Portfolio Company expenses should make fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years, easier to understand. Investors will continue to have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company. The proposed amendments would also modify the expense example of the Form N–4 fee table, consistent with the use of the range of Portfolio Company expenses in the fee table.

The proposed amendments would make other technical changes to the format and instructions of the fee table of Form N–4, in order to improve transparency of the fees and charges that contractowners will pay, to make the Form N–4 fee table more consistent with its counterpart in Form N–6, and to reflect changes in the types of fees and charges assessed by variable annuity contracts since the fee table of Form N–4 was adopted. We believe these changes may improve disclosure of variable annuity fees and expenses to investors. It is difficult to quantify the effects of this improved disclosure, though we note that the changes we are proposing are limited in nature.

The proposed amendments may also result in slightly reduced printing and mailing costs to registrants. Disclosure of the range of Portfolio Company expenses rather than the expenses of each Portfolio Company may shorten the typical variable annuity prospectus, because disclosure of these expenses sometimes comprises a full page, or more, of a variable annuity prospectus. [37] We do not expect that any of the other changes in the proposed amendments would lengthen the variable annuity prospectus, as these changes would largely affect the format in which fee and expense information is to be presented, rather than the quantity of information presented. Based on a print run of 20,000 copies for a typical variable annuity prospectus, and printing and mailing costs of $0.05 per page, the reduction in printing and mailing costs attributable to the proposed amendments may equal $1,000 for a typical variable annuity contract. [38] Based on an estimate of 520 variable annuity contracts currently being actively marketed, therefore, these

[36] Under a variable annuity contract, purchase payments are invested in an insurer's separate account created under state law and legally segregated from the assets of the insurer's general account. The separate account offers the contract owner a number of investment options, which generally consist of mutual funds.

[37] The proposed amendments would require a registrant to include a statement referring investors to Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. This required statement would not impose any additional disclosure burden on registrants, because the instructions to Form N–4 currently require a similar cross-reference to the Portfolio Company prospectuses. *See* General Instruction 1 to Item 3(a) of Form N–4.

[38] These estimates are based on information provided to the staff by an insurance company that issues variable annuities of the typical print runs of its prospectuses, and its printing and mailing costs.

printing and postage savings could total $520,000 annually. [39]

In addition, conforming the disclosure requirements for Portfolio Company expenses in variable annuity prospectuses to those in variable life prospectuses may simplify the process of preparing registration statements for some registrants, because frequently insurance companies that issue variable annuities also issue variable life insurance.[40] We believe that these cost savings will be relatively small, however.

B. Costs

Although the proposed amendments to the fee table of Form N–4 are limited and many of them are technical in nature, they differ from the current requirements of the fee table of Form N–4, which have been in place since 1989. Therefore, variable annuity issuers may incur a one-time cost for training in order for their personnel, particularly lawyers and others who are responsible for supervising the preparation of filings on Form N–4, to review and analyze the disclosure requirements of the amendments to Form N–4. Because the proposed amendments would make mostly minor changes to the current format of the Form N–4 fee table, and would not require the disclosure of information that the current fee table does not require, we estimate that this cost will be fairly small. We lack data necessary to make a more precise estimate of the cost resulting from the amendments, but we estimate that this cost will be approximately $500 for each insurance company that sponsors separate accounts that are registered on Form N–4 and issue variable annuity contracts that are actively being sold. Further, we estimate that there are 94 such insurance companies. [41] We therefore estimate the one-time cost attributable to the proposed amendments to Form N–4 to be $47,000. We request comment on both the cost estimate of $500 for each insurance company affected, and the total cost estimate of $47,000.

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4. We expect that in preparing their fee tables for Form N–4, registrants will still need to calculate each line item of expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other proposed amendments modifying the format and instructions of the Form N–4 fee table to conform more closely to the fee tables of Form N–6 and Form N–1A will have no net effect on the burden hours for completing and filing Form N–4, because they will not require disclosure of any additional information by issuers.

The Commission requests comment on the costs and benefits of the proposed amendments to Form N–4, including any benefits to investors resulting from improved disclosure, and estimates of the one-time cost burden to apply the requirements of the proposed amendments to their existing variable annuity prospectuses. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Securities Exchange Act of 1934 require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[42]

The proposed amendments to Form N–4 are expected to have minimal effects on efficiency and competition among issuers of variable annuity insurance policies. If adopted, the proposed amendments would revise the fee table in the prospectus of Form N–4 to require registrants to disclose the range of expenses for all the Portfolio Companies offered through the separate account, rather than disclosing separately the fees and expenses of each Portfolio Company. In addition, the proposed amendments would make certain other technical changes to conform the format and instructions to the fee table of Form N–4 more closely to its counterparts in Form N–6 and Form N–1A. The proposed amendments would allow fee table disclosure of Portfolio Company expenses to be shorter, and would generally make fee table disclosure clearer and more understandable to investors. However, we would not expect the proposed amendments to have any significant effect on competition and efficiency because they would not change the quantity of information about fees and expenses that investors in variable annuity contracts receive. Similarly, it is unclear whether the proposed amendments to Form N–4 will affect capital formation. We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation.

V. Paperwork Reduction Act

Form N–4 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Form N–4 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Separate Accounts Organized as Unit Investment Trusts.'' The information collection requirements imposed by Form N–4 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form N–4 (OMB Control No. 3235–0318) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a-8] and section 5 of the Securities Act [15 U.S.C. 77e]. The purpose of Form N–4 is to meet the registration and disclosure requirements of the Securities Act and Investment Company Act and to enable separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with information necessary to evaluate an investment in a variable annuity contract.

The Commission is proposing to amend Form N–4 to conform the disclosure of Portfolio Company expenses in the fee table to the format used in Form N–6, the registration form for insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies. Under the proposed amendments, registrants on Form N–4 would be required to disclose only the range of the expenses for all of the Portfolio Companies in which the separate account invests. Variable

[39] The estimate of 520 variable annuity contracts is based on the number of contracts tracked by Morningstar, Inc. Morningstar, Principia Pro Plus, Variable Annuities/Life (Jan. 2002).

[40] We estimate, based on an analysis of data from the EDGAR filing system for 2000 and 2001, that approximately two-thirds of insurers issuing variable annuities also issue variable life insurance policies.

[41] The estimate of the number of insurance companies issuing variable annuities is based on the staff's analysis of data from the EDGAR filing system for 2000 and 2001.

[42] 15 U.S.C. 77b(b), 78c(f), and 80a–2(c).

annuity investors would continue to have access to complete information about the Portfolio Company fees and expenses because disclosure of the fees and expenses for each Portfolio Company would be located in its prospectus under the requirements of Form N–1A. In addition, registrants on Form N–4 would be required to disclose Portfolio Company expenses in the fee table prior to expense reimbursements and fee waiver arrangements, consistent with the approach adopted by the Commission in Form N–1A and Form N–6. Registrants would be permitted to disclose expenses after reimbursement or waiver in a footnote to the fee table. The proposed amendments would also make other technical changes in order to conform the format and instructions for the fee table of Form N–4 to its counterparts in Form N–1A and Form N–6.

The Commission estimates that there are 615 separate accounts offering variable annuity contracts that are registered with the Commission on Form N–4.[43] We estimate that Form N–4 requires approximately 219.8 hours for each post-effective amendment and 298 hours for each initial registration statement, with total aggregate burden hours of 284,379.20.[44]

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4. We expect that in preparing their fee tables for Form N–4, registrants will still need to calculate each line item of expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other proposed amendments modifying the format of the Form N–4 fee table to conform more closely to the fee tables of Form N–6 and Form N–1A will have no net effect on the burden hours for completing and filing Form N–4, because they will not require any additional information to be disclosed.

We request your comments on the accuracy of our estimate. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits 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 Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–07–02. Request for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–07–02, and be submitted to the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, Attention: Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Form N–4 would not, if adopted, have a significant economic impact on a substantial number of small entities. Few, if any, small entities are affected by Form N–4. The Chairman's certification, including the reasons therefor, is attached to this release as Appendix A. The Commission encourages written comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Authority

The amendments to Form N–4 are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24, 80a–29, and 80a–37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Note: The text of Form N–4 does not and these amendments will not appear in the *Code of Federal Regulations.*

3. Form N–4 (referenced in §§ 239.17b and 274.11c), Item 3(a), is amended by:

a. Revising Item 3(a);

b. Revising Instructions: General Instructions 1, 3, and 5;

c. Removing the heading ''Portfolio Company Annual Expenses'' preceding Instruction 15;

d. Removing Instructions 16 through 21;

e. Redesignating Instruction 15 as Instruction 16;

f. Adding new Instruction 15;

g. Adding the heading ''Annual [Portfolio Company] Operating Expenses'' to precede newly redesignated Instruction 16; and

h. Adding new Instructions 17 through 25, to read as follows:

Form N–4

* * * * *

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[43] *See* Proposed Collection; Comment Request (Extension of Form N–4) (Jan. 4, 2000) [65 FR 1934 (Jan. 12, 2000)]. The estimate of the number of separate accounts was based on the staff's analysis of filings it received on Form N–4 over a representative period.

[44] *See id.* The burden hours to complete an initial registration statement and a post-effective amendment on Form N–4 were based on a survey by the staff of nine issuers of variable annuity contracts.

Item 3. Synopsis

(a) Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 430.421(d)]:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the contract. The first table describes the fees and expenses that you will pay at the time that you buy the contract, surrender the contract, or transfer cash value between investment options. State premium taxes may also be deducted.

Contractowner Transaction Expenses:	
Sales Load Imposed on Purchases (as a percentage of purchase payments).	_____%
Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable).	_____%
Surrender Fees (as a percentage of amount surrendered, if applicable).	_____%
Exchange Fee	_____%

The next table describes the fees and expenses that you will pay periodically during the time that you own the contract, not including [portfolio company] fees and expenses.

[Annual] Contract Fee	.....
Separate Account Annual Expenses (as a percentage of average account value)	
Mortality and Expense Risk Fees	_____%
Account Fees and Expenses	_____%
Total Separate Account Annual Expenses	_____%

The next table describes the [portfolio company] fees and expenses that you will pay periodically during the time that you own the contract. The table shows the minimum and maximum fees and expenses charged by any of the [portfolio companies]. More detail concerning each [portfolio company's] fees and expenses is contained in the prospectus for each [portfolio company].

Annual [Portfolio Company] Operating Expenses (expenses that are deducted from [portfolio company] assets)	
Management Fees	____% – ____%
Distribution [and/or Service] (12b-1) Fees	____% – ____%
Other Expenses	____% – ____%
Total Annual [Portfolio Company] Operating Expenses	____% – ____%

Example

This Example is intended to help you compare the cost of investing in the contract with the cost of investing in other variable annuity contracts.

The Example assumes that you invest $10,000 in the contract for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the maximum fees and expenses of any of the [portfolio companies]. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

(1) If you surrender your contract at the end of the applicable time period:			
1 year	3 years	5 years	10 years
$__	$__	$__	$__
(2) If you annuitize at the end of the applicable time period:			
1 year	3 years	5 years	10 years
$__	$__	$__	$__
(3) If you do not surrender your contract:			
1 year	3 years	5 years	10 years
$__	$__	$__	$__

Instructions:

General Instructions

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

* * * * *

3. A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions. A Registrant may modify or add captions if the captions shown do not provide an accurate description of the Registrant's fees and expenses.

* * * * *

5. In the Contractowner Transaction Expenses, [Annual] Contract Fee, and Separate Account Annual Expenses tables, the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

* * * * *

15. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual portfolio company operating expenses, add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Annual [Portfolio Company] Operating Expenses

* * * * *

17. If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum expenses of any portfolio companies for each line item. For example, if a Registrant has five sub-accounts with management fees of 0.50%, 0.70%, 1.00%, 1.10%, and 1.25%, respectively, it should disclose that management fees range from 0.50% to 1.25%. The minimum and maximum amounts disclosed for ''Total Annual [Portfolio Company] Operating Expenses'' should be the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' for any portfolio company, and not the sum of the minimum and maximum amounts disclosed for the individual line items. For example, assume a Registrant has three sub-accounts. Sub-account 1 has management fees of 0.50%, 12b–1 fees of 0.25%, other expenses of 0.30%, and total expenses of 1.05%; sub-account 2 has management fees of 0.90%, 12b–1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.15%; and sub-account 3 has management fees of 1.00%, 12b–1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.25%. The minimum and maximum amounts to be disclosed in the table are: management fees—0.50%-1.00%; 12b–1 fees—0.00%-0.25%; other expenses: 0.25%-0.30%; total annual [portfolio company] operating expenses—1.05%-1.25%. The total annual [portfolio company] operating expenses are the expenses of sub-accounts 1 and 3, respectively, not the sum of the minimum and maximum amounts disclosed for the individual line items, which would be 0.75%-1.55%.

18. ''Management Fees'' include investment advisory fees (including any fees based on a portfolio company's performance), any other management fees payable to a portfolio company's investment adviser or its affiliates, and administrative fees payable to a portfolio company's investment adviser or its affiliates that are not included as ''Other Expenses.''

19. ''Distribution [and/or Service] (12b–1) Fees'' include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 [17 CFR 270.12b–1].

20. (a) ''Other Expenses'' include all expenses not otherwise disclosed in the table that are deducted from a portfolio company's assets. The amount of expenses deducted from a portfolio company's assets are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(b) ''Other Expenses'' do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any portfolio company that would, if

included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Other Expenses'' would have been had the extraordinary expenses been included.

21. (a) Base the percentages of ''Annual [Portfolio Company] Operating Expenses'' on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company. If the Registrant or a portfolio company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Annual [Portfolio Company] Operating Expenses.''

(b) If there have been any changes in ''Annual [Portfolio Company] Operating Expenses'' that would materially affect the information disclosed in the table:

(i) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(ii) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(c) A change in ''Annual [Portfolio Company] Operating Expenses'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Annual [Portfolio Company] Operating Expenses'' does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a portfolio company's assets.

22. A Registrant may reflect minimum and maximum actual [portfolio company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

23. A Registrant may include additional tables showing annual operating expenses separately for each portfolio company immediately following the required table of ''Annual [Portfolio Company] Operating Expenses.'' The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing ''Annual Fund Operating Expenses.''

Example

24. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under ''Separate Account Annual Expenses'' remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses;

(b) Assume deduction of the maximum percentage amount of expenses shown under ''Total Annual [Portfolio Company] Operating Expenses,'' and that this amount remains the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses. An additional example that assumes deduction of the minimum percentage amount of expenses shown under ''Total Annual [Portfolio Company] Operating Expenses'' may also be provided, immediately following the required expense example based on maximum portfolio company expenses. In lieu of providing the required example based on maximum portfolio company expenses, a Registrant may include separate expense examples based on the expenses of each portfolio company;

(c) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(d) For any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant as of the level at the end of the most recently completed fiscal year;

(e) Assume no exchanges or other transactions;

(f) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to ''Separate Account Annual Expenses,'' and assume that it remains the same in each year of the 1-, 3-, 5-, and 10-year periods;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Include in the Example the information provided by the caption ''If you annuitize at the end of the applicable time period'' only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

25. *New Registrants.* For purposes of this Item, a ''New Registrant'' is a Registrant (or sub-account of the Registrant) that does not include in Form N–4 financial statements reporting operating results or that includes financial statements for the Registrant's (or sub-account's) initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants:

(a) Base the percentages in ''Annual [Portfolio Company] Operating Expenses'' on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of ''Other Expenses.'' Disclose in a footnote to the table that ''Other Expenses'' are based on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce any minimum or maximum [portfolio company] operating expense or the estimate of minimum or maximum ''Other Expenses'' (regardless of whether the arrangement has been guaranteed). If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

(c) Complete only the 1- and 3-year period portions of the Example, and estimate any [annual] contract fees collected.

* * * * *

Dated: April 12, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[**Note:** Appendix A to the preamble will not appear in the *Code of Federal Regulations*.]

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission, on information and belief, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Form N–4, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed amendments to Form N–4, a registration form for insurance company separate accounts that offer variable annuity contracts, would amend the fee table presentation in the prospectus of Form N–4 to require disclosure of the range of annual expenses for all portfolio companies in which the separate account invests, rather than separate disclosure of the expenses of each portfolio company.

Few, if any, registered insurance company separate accounts have net assets of less than $50,000,000, when separate account assets are aggregated with the assets of the sponsoring insurance company. As a result, few, if any, small entities within the definitions provided in Rule 0–10 under the Investment Company Act of 1940 and rule 157 under the Securities Act of 1933 would be affected by the proposed amendments to Form N–4, if adopted. Accordingly, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

Dated: April 11, 2002.

Harvey L. Pitt,
Chairman.

[FR Doc. 02–9456 Filed 4–22–02; 8:45 am]

BILLING CODE 8010–01–U

Federal Register

Tuesday,
April 23, 2002

Part V

Securities and Exchange Commission

17 CFR Parts 229, 240 and 249
Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240 and 249

[Release No. 33–8089; 34–45741; File No. S7–08–02]

RIN 3235–AI33

Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: We are proposing to accelerate the filing of quarterly reports and annual reports under the Securities Exchange Act of 1934 by domestic reporting companies that have a public float of at least $75 million, that have been subject to the Exchange Act reporting requirements for at least 12 calendar months, and that previously have filed at least one annual report. We propose to shorten the filing deadlines for these companies from 45 to 30 calendar days after period end for quarterly reports and from 90 to 60 calendar days after fiscal year end for annual reports. We also are proposing to require companies subject to the accelerated filing deadlines to disclose in their annual reports where investors can obtain access to company filings, including whether the company provides access to its reports on Forms 10–K, 10–Q and 8–K on its Internet website, free of charge, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission.

DATES: Comments should be received on or before May 23, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–08–02. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website *(http://www.sec.gov).*[1]

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 101[2] of Regulation S–K[3] under the Securities Act of 1933 (''Securities Act''),[4] Forms 10–Q[5] and 10–K[6] under the Securities Exchange Act of 1934 (''Exchange Act'')[7] and Exchange Act Rules 12b–2,[8] 13a–10[9] and 15d–10.[10]

I. Introduction

The U.S. system of federal securities regulation is based on full and fair disclosure. Congress, in enacting the federal securities laws, embraced full disclosure as the best way to permit the financial markets to allocate capital. For this system to function most effectively, the markets must have access to information that is clear, accurate, and timely.

The Exchange Act requires companies to make information publicly available to investors on an ongoing basis to aid in their investment and voting decisions.[11] Moreover, seasoned issuers (that is, those that have been subject to the reporting requirements for a certain period of time) incorporate information from their Exchange Act reports into their registration statements under the Securities Act. Investors purchasing securities in public offerings therefore also rely on Exchange Act disclosure.

Generally, the rules adopted by the Commission under the Exchange Act require disclosure at quarterly and annual intervals, with specified significant events reported on a more current basis.[12] Specifically, domestic issuers subject to the Exchange Act must, among other obligations, file the following reports:[13]

- Annual reports on Form 10–K (or Form 10–KSB in the case of small business issuers[14]);[15]
- Quarterly reports on Form 10–Q (or Form 10–QSB in the case of small business issuers) for the first three quarters of its fiscal year;[16] and

[2] 17 CFR 229.101.

[3] 17 CFR 229.10 *et seq.*

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 249.308a.

[6] 17 CFR 249.310.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 240.12b–2.

[9] 17 CFR 240.13a–10.

[10] 17 CFR 240.15d–10.

[11] The following types of companies are subject to the obligation to provide information to the secondary markets through reports filed with the Commission:

A company that has registered a class of equity or debt securities under Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)] so that the securities can be listed and traded on a national securities exchange;

A company that has registered a class of equity securities under Section 12(g)(1) of the Exchange Act [15 U.S.C. 78*l*(g)(1)] and Exchange Act Rule 12g–1 [17 CFR 240.12g–1] because it had total assets of more than $10 million and the class of equity securities is held by more than 500 record holders as of the last day of the company's fiscal year (and cannot rely on an exemption from such registration);

A company that has voluntarily registered a class of equity securities under Section 12(g) of the Exchange Act;

Under Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], a company that filed registration statement under the Securities Act that became effective and has not met the thresholds for suspension of the reporting requirement; and

Under Exchange Act Rules 12g–3 and 15d–5 [17 CFR 240.12g–3 and 240.15d–5], a company that has succeeded to the obligation of another reporting company.

[12] See, for example, Exchange Act Rules 13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13 [17 CFR 240.13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13].

[13] Reporting companies that are foreign private issuers, as defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)], are subject to different requirements for periodic reports. They are not required to file quarterly reports. They file annual reports on Form 20–F [17 CFR 249.220f]. Instead of current reporting on Form 8–K, foreign issuers provide reports on Form 6–K [17 CFR 249.306]. Certain Canadian issuers may file different reports under the Multijurisdictional Disclosure System. Foreign government issuers, as defined in Exchange Act Rule 3b–4(c), also are subject to different reporting requirements. They file annual reports on Form 18–K [17 CFR 249.318]. Foreign private issuers may elect to file the forms used by domestic reporting companies and then are subject to the same deadlines.

[14] The term ''small business issuer'' is defined in Exchange Act Rule 12b–2 as a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company.

[15] Form 10–K (and Form 10–KSB [17 CFR 249.310b]) provides a comprehensive overview of the reporting company on an annual basis. The form consists of four parts (Form 10–KSB has three parts, but the categories of required information are similar). Part I requires disclosure regarding the company's business, its properties, legal proceedings, and matters submitted to a security holder vote. Part II requires disclosure regarding the market for the company's common equity, sales of unregistered securities, the use of proceeds from recent sales of securities, specified financial statements and information, management's discussion and analysis of financial condition and results of operations, and quantitative and qualitative disclosure about market risk. Part III requires disclosure regarding the company's directors and executive officers, executive compensation, security ownership and certain relationships, and related party transactions. Part IV requires disclosure of exhibits, financial statement schedules, and a list of current reports filed on Form 8–K.

[16] Form 10–Q (and Form 10–QSB [17 CFR 249.308b]) consists of two parts. Part I requires disclosure of specified financial statements, management's discussion and analysis of financial condition and results of operations, and quantitative and qualitative disclosure about market

• Current reports on Form 8–K for a number of specified events.[17]

A domestic reporting company must file a quarterly report no later than 45 calendar days after the end of each of its first three fiscal quarters, and an annual report no later than 90 calendar days after the end of its fiscal year. In addition, a company may be required to file transition reports on Form 10–K or 10–KSB or Form 10–Q or 10–QSB when it changes its fiscal year.[18]

Over 30 years have passed since we last changed these deadlines. In the interim, advances in communications and information technology have made it easier for companies to process and disseminate information swiftly. Many large seasoned reporting companies capture and evaluate information and announce their quarterly and annual financial results well before they file their formal reports with the Commission. These earnings announcements are generally less complete in their disclosure than quarterly or annual reports and can emphasize information that is less prominent in quarterly or annual reports.[19] Investors also process, evaluate and react to information on a much shorter timeframe. The delayed filing of reports, however, means investors often make decisions without access to the more extensive disclosure in the company's Exchange Act reports.

Investors also need ready access to corporate information to make their investment and voting decisions. An effective and economical method for companies to make information available about themselves is through their Internet websites. We therefore strongly encourage companies to provide investors with website access to their Exchange Act reports. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for companies to make investors aware of the different sources that provide access to company information.

As a step in modernizing the periodic reporting system and improving the usefulness of quarterly and annual reports to investors, we are proposing to shorten the filing due dates for these reports for many companies. We also are proposing to require a company subject to these accelerated filing deadlines to disclose in its annual report on Form 10–K where investors can obtain timely access to company filings, including whether the company provides access to its reports on Forms 10–K, 10–Q and 8–K on its Internet website, free of charge, as soon as reasonably practicable, and in any event on the same day as, these reports are electronically filed with or furnished to the Commission.[20] If the company does not provide website access in this manner, it also must disclose why it does not do so and where else investors can access these filings electronically immediately upon filing. The company also would be required to disclose its website address, if it has one.

II. Proposed Changes

A. Acceleration of Quarterly and Annual Report Due Dates

1. Reasons for Proposal

While the specific disclosure required in quarterly reports and annual reports has evolved over the past 30 years, and the integrated disclosure system has placed added emphasis on Exchange Act reporting, the basic structure and timeframes that were established in 1970 remain in place today. Since that time, annual reports for domestic companies have been due 90 calendar days after a reporting company's fiscal year end.[21] Transition reports filed on Form 10–K or 10–KSB also have a 90-day deadline. Since 1946, quarterly periodic reports have been due within 45 calendar days after the end of a quarter, although from 1955 to 1970, companies filed semi-annual reports instead of quarterly reports.[22] Transition reports filed on Form 10–Q or 10–QSB also have a 45-day deadline.

The ''Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission'' in 1977 led to the establishment of the current integrated disclosure system.[23] The system involves significant reliance on Exchange Act reports to satisfy the disclosure requirements for registration statements filed under the Securities Act. The Advisory Committee did not recommend changing, and the Commission did not change, the periodic report filing dates when it established the integrated disclosure system.

We believe that periodic reports contain valuable information for investors. Commentators have long remarked, however, that because the due dates for periodic reports are so lengthy, the information included in the reports often is stale by the time the reports are filed.[24] While quarterly and annual reports at present generally reflect historical information, it is important that a lengthy delay before that information becomes available does not make the information less valuable to investors. Significant technological advances over the last three decades have both increased the market's demand for more timely corporate disclosure and the ability of companies to capture, process and disseminate this information.[25] Computers, sophisticated financial software, electronic mail, teleconferencing, videoconferencing and other technologies available today have replaced the paper and pencil, typewriter, adding machines, carbon paper, mail system, travel and face-to-face meetings relied on in 1970.

In our 1998 release proposing reform of the Securities Act registration process,[26] we noted that hundreds of public companies issue press releases to announce quarterly and annual results

risk. Part II requires disclosure regarding legal proceedings, changes in securities, sales of unregistered securities, the use of proceeds from recent sales of securities, defaults on senior securities, exhibits, and a list of current reports filed on Form 8–K.

[17] 17 CFR 249.308. These events currently include change in control of the registrant, the acquisition or disposition of a significant amount of assets, the bankruptcy or receivership of the registrant, changes in the registrant's certifying accountant, the resignation of a member of the registrant's board of directors, and any other event that the registrant deems of significance to security holders.

[18] See Exchange Act Rules 13a–10 and 15d–10.

[19] See Release No. 33–8039 (Dec. 4, 2001) [66 FR 63731].

[20] Even if a company chooses not to make its reports available on its website, investors still would be able to access information about the company through our EDGAR system. A company's posting of its reports on its website would not be a substitute for filing documents with the Commission.

[21] See General Instruction A of Forms 10–K and 10–KSB and Release No. 34–9000 (Oct. 21, 1970) [35 FR 16919]. Before 1970, the due date for filing annual reports was 120 days after a company's fiscal year end.

[22] See General Instruction A.1 of Forms 10–Q and 10–QSB; Release No. 34–3803 (Mar. 28, 1946) [11 FR 10988]; and Release No. 34–9004 (Oct. 28, 1970) [35 FR 17537].

[23] See Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission (Nov. 3, 1977).

[24] As far back as 1969, former SEC Chairman Manuel Cohen said: ''because companies need not file the [quarterly] report until 45 days after the end of the quarter, the information is often stale.'' See J. Robert Brown, *Corporate Communications and the Federal Securities Laws*, 53 Geo. Wash. L. Rev. 741 (1985).

[25] See, for example, Report to the Congress: The Impact of Recent Technological Advances on the Securities Markets, (Sept. 1997). That report, like all Commission reports issued after 1996, is available on our Internet website (http://www.sec.gov).

[26] See Release No. 33–7606A (Nov. 13, 1998). In that release, we solicited comment on whether we should shorten the due dates of annual and quarterly reports. Comments received on that release are available through our Public Reference Room under File No. S7–30–98.

well before they file their reports with us.[27] While these press releases do not contain all of the information included in quarterly and annual reports, it appears that companies and their auditors have developed efficiencies over the years that allow them to generate financial data quickly.[28] Companies are responsible for the information in these announcements. We understand as a general matter that the audit work is essentially completed and other steps have been taken to ensure their accuracy.

These earnings announcements also reflect the importance of the financial information and investors' demand for it at the earliest possible time. While we applaud companies' practices of issuing press releases to keep investors promptly informed of important corporate developments, the amount of information and the manner of its presentation in press releases varies from company to company. Investors often must wait for the periodic reports to receive financial statements and the accompanying notes prepared in accordance with generally accepted accounting principles, management's discussion and analysis, and other vitally important financial disclosures. Shortening the due date of quarterly and annual reports would provide more timely disclosure to investors and the market.

In establishing the appropriate timeframes for filing periodic reports, however, we must balance the market's need for information with the time companies need to prepare that information without undue burden. We recognize that it may be necessary for a new public company to develop experience with the preparation and filing of periodic reports. Similarly, smaller issuers may not have the resources or infrastructure to prepare their reports on a shorter timeframe without undue burden or expense.

In our 1998 release, we requested comment as to whether we should shorten the due dates for quarterly and annual reports.[29] We received a significant number of comments in response to that request. Several commenters supported or did not object to the acceleration of quarterly and annual report due dates, with some arguing that accelerated due dates are necessary in today's fast-paced marketplaces to ensure the efficient allocation of capital and the timely flow of information to the market.[30]

A larger number of commenters, however, thought that a shortening of due dates would be overly burdensome,[31] particularly for small companies.[32] Several of the commenters that argued against shortening deadlines also were concerned that the benefits derived from technological advances over the past 30 years have been offset by additional and more complex reporting requirements. They were concerned that accelerated due dates would result in less accurate filings.[33]

Some of the commenters who objected to an acceleration of filing deadlines and several other commenters offered alternative suggestions that might help mitigate the impact of such a change if the Commission was committed to an acceleration proposal. One suggestion was a more gradual acceleration of due dates, where large or seasoned issuers would be the first group subject to shortened filing dates or the filing deadline would be shortened in incremental steps (for example, initially to 40 days for quarterly reports and 75 days for annual reports).[34] Another commenter suggested that companies should file their reports by the earlier of the current due dates or a specified date after the company's first release of earnings.[35] Some commenters requested that we propose changes in a separate release specifically addressing filing deadlines, which we are doing today.[36]

On February 13, 2002, we announced our intention to propose shortened filing deadlines as part of a series of initial steps to modernize and improve the corporate disclosure system.[37] We recently hosted roundtable discussions in New York, Washington, DC, and Chicago at which investor relations professionals, corporate executives, academics, and experienced legal counsel discussed financial disclosure and auditor oversight.[38] Several of the participants at these roundtables

[27] Our Office of Economic Analysis has determined that, over the past 10 years, registrants on average issued their year-end earnings announcements approximately 43 days after fiscal year end. In addition, registrants on average issued their quarterly earnings announcements approximately 27 days after period end.

[28] See, for example, Tad Leahy, ''The Reality of Real-Time reporting,'' Business Finance, March 2000, at 93.

[29] See note 26 above.

[30] See, for example, the Letters in File No. S7–30–98 of American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''); Association of Investment Management and Research; Michael J. Connell; Council of Institutional Investors (''CII''); Ford Motor Company; Ford Motor Credit Company; Institutional Shareholder Services (''ISS''); Investment Company Institute (''ICI''); North American Securities Administrators Association, Inc. (''NASAA''); Pennsylvania Securities Commission; Service Employees International Union Master Trust (''SEIU''); and Teachers Insurance and Annuity Association-College Retirement Equities Fund (''TIAA–CREF'').

[31] See, for example, the Letters in File No. S7–30–98 of American Bar Association (''ABA''); American Corporate Counsel Association (''ACCA''); Agway, Inc.; Association of the Bar of the City of New York (''NYCBA''); Association of Publicly Traded Companies; Baldwin & Lyons, Inc.; BostonFed Bancorp, Inc.; Business Roundtable; Cabot Corporation; Charles Schwab & Co., Inc.; Chevron Corporation; Citigroup Inc.; Cleary, Gottlieb, Steen & Hamilton (''Cleary''); Diamond Home Services, Inc.; Duke Energy Corporation; Emerson Electric Co.; Financial Executives Institute (''FEI''); Financial Institutions Accounting Committee (''FIAC''); FirstEnergy Corp.; Fried, Frank, Harris, Shriver & Jacobson (''Fried Frank''); General Motors Corporation (''GM''); Goldman, Sachs & Co.; Grubb & Ellis Company; Home Federal Savings; Jacobs Engineering Group Inc. (''Jacobs''); John Hancock Mutual Life Insurance Company; J.P. Morgan & Co.; KPMG LLP; Mellon Bank Corporation; National Association of Real Estate Investment Trusts (''NAREIT''); New York State Society of Certified Public Accountants (''NYSSCPA''); PennFed Financial Services, Inc.; PPG Industries, Inc.; PricewaterhouseCoopers LLP; R.R. Donnelley & Sons Company (''Donnelley''); Schering-Plough Corporation; Southern Company; Sullivan & Cromwell (''S&C''); Toyota Motor Credit Corporation; USX Corporation; and Wells Fargo & Company.

[32] See, for example, the Letters in File No. S7–30–98 of CCF Holding Company; The CIT Group, Inc.; Equality Bancorp, Inc.; Ernst & Young LLP; First National Bank of West Chester; First Northern Capital Corp.; FirstBank Northwest; Frankfort First Bancorp, Inc.; Green Street Financial Corp.; Home Building Bancorp, Inc.; Malizia, Spidi, Sloane & Fisch, P.C. (''Malizia''); New York State Bar Association; Provident Bancorp; Security of Pennsylvania Financial Corp.; Seven Silicon Valley law firms and Prof. Joseph A. Grundfest; Tri-County Bancorp, Inc.; Weinbaum & Yalamanchi; Wells Financial Corp.; Westerfed Financial Corp.; West Essex Bank; and WVS Financial Corporation.

[33] See, for example, the Letters in File No. S7–30–98 of Agway, Inc.; Business Roundtable; Chevron Corporation; Citigroup Inc.; Cleary; FEI; FIAC; FirstEnergy Corp.; GM; Jacobs; Malizia; Mellon Bank Corporation; NAREIT; NYSSCPA; PPG Industries, Inc.; S&C; and Toyota Motor Credit Corporation.

[34] See, for example, the Letters in File No. S7–30–98 of the ABA, ACCA; American Institute of Certified Public Accountants; Baldwin & Lyons, Inc.; Michael J. Connell; Ernst & Young LLP; Fried Frank; Shering-Plough Corporation; Southern Company; and Weinbaum & Yalamanchi.

[35] See the ABA Letter in File No. S7–30–98.

[36] See the Michael J. Connell and Donnelley Letters in File No. S7–30–98.

[37] In our Press Release No. 2002–22 (Feb. 13, 2002), we stated that in addition to the proposed amendments discussed in this release, we intend to propose rules to (1) expand the list of significant events requiring disclosure on Form 8–K; (2) require disclosure on a current basis of certain transactions involving securities of a company entered into with any of its executive officers and directors; and (3) require disclosure regarding critical accounting policies. In a companion release being issued today, we propose to amend Form 8–K to require disclosure on a current basis of certain transactions involving securities of a company entered into with any of its executive officers and directors. See Release No. 34–45742 (Apr. 12, 2002).

[38] See SEC Press Release Nos. 2002–28 (Feb. 22, 2002) and 2002–46 (Mar. 27, 2002). The New York roundtable was held on March 4, 2002. The Washington DC roundtable was held on March 6, 2002. The Chicago roundtable was held on April 4, 2002. Archived broadcasts of the roundtables are available to the public on our Internet website at *www.sec.gov*.

indicated that reporting within the proposed shortened deadlines was feasible.[39] Some participants, however, referred to the comment letters on our 1998 Securities Act reform proposals,[40] and were concerned about the ability of companies, and smaller companies in particular, to report in a shorter timeframe.[41] They thought that accelerating deadlines could cause the quality of reports to diminish.[42] One participant was concerned that shortened deadlines may present more problems for quarterly reports than for annual reports.[43]

2. Description of Proposal

After evaluating the discussions at the roundtables, the comments from our 1998 release, and technological and other market developments since the 1998 release, we propose to accelerate the due dates of quarterly and annual reports only for companies:

- With a public float[44] of $75 million or more as of a date within no more than 60 and no less than 30 days before the end of the company's last fiscal year; [45]
- That have been subject to the reporting requirements of Section 13(a)[46] or 15(d) of the Exchange Act for a period of at least 12 calendar months preceding the filing of the report; and
- That have filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act.

For a company meeting these requirements, which we define as an ''accelerated filer,'' we propose to shorten the due date for annual reports on Form 10–K to 60 calendar days after the company's fiscal year end. We propose to shorten the due date for quarterly reports on Form 10–Q to 30 calendar days after the end of each of the first three quarters of the company's fiscal year. We propose similar changes to the transition reports that an accelerated filer must make when it changes its fiscal year. Specifically, we propose to accelerate the due date of transition reports to 60 calendar days for transition reports filed on Form 10–K and 30 calendar days for transition reports filed on Form 10–Q.[47]

Although our proposed changes would not eliminate entirely the information gap between a company's announcement of earnings and the filing of more extensive information in its periodic reports, they would lessen the gap. We seek to minimize this gap while still giving companies enough time to prepare their reports. We are aware that it takes companies time to prepare and verify the more extensive disclosures that must be included in the reports, and we appreciate the importance of allowing sufficient preparation time to ensure accurate presentation of results, as well as to permit the mandated audit or review of financial information by independent auditors and consideration by audit committees and boards of directors. We acknowledge that, while the deadlines for filing quarterly and annual reports have not changed in over 30 years, the disclosure requirements have changed and some companies, particularly those with widespread operations, face additional complexities in today's environment. However, for the reasons discussed above, we anticipate that these changes have not outweighed fully the ability of companies to report in shorter timeframes, particularly with respect to companies that would meet our proposed public float and reporting history requirements. We believe that these companies may be able to disclose information within the shortened timeframes without sacrificing accuracy or completeness, although we request comment on these preliminary beliefs. Accordingly, we propose a 30 day period for quarterly reports and a 60 day period for annual reports. A 30 and 60 day period also represents common and easily measurable periods for investors and companies to calculate filing deadlines. We propose conforming deadlines for transition reports so that they remain similar to the deadlines for periodic reports.[48]

Questions Regarding Accelerating Filing Due Dates

- To what extent would shortening the due dates for quarterly, annual and transition reports improve the flow of information to investors and the markets?
- Should the proposed filing periods be longer or shorter than proposed? What factors should we consider in making these filing periods longer or shorter?
- Should we only accelerate the annual report due date, or only the quarterly report due date?
- Should we require companies to file their reports by the earlier of the existing deadlines or some earlier time after their first release of earnings information for that period? What timeframe would be appropriate? For example, would a 15 or 30 day period after the earnings announcement provide enough time for a company to finalize the corresponding periodic report? Would such a requirement delay earnings announcements?
- Are there ways other than our proposal to get important information out to investors sooner? Would our proposals cause a delay in the release of earnings announcements? Should we only require that certain information, such as the audited or reviewed financial statements and management's discussion and analysis, be filed on an accelerated basis?
- Do the proposed Form 10–Q and 10–K due dates provide affected companies with enough time to prepare their reports? Do affected companies anticipate any significant problems in complying with the accelerated deadlines? [49] If so, what types of problems?
- Would the proposal impose any significant costs on these companies? If so, what type and amount of costs? Are these short-term or one-time costs to

[39] See, for example, Richard Carbone and Raymond Groves, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[40] See, for example, John White, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in New York, NY (Mar. 4, 2002) (archived broadcast available at *www.sec.gov*); and James Cheek, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[41] See, for example, Edward Nusbaum, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Chicago, IL (Apr. 4, 2002) (archived broadcast available at *www.sec.gov*).

[42] See note 40 above.

[43] See, for example, Phil Livingston, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[44] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, market capitalization) minus the value of common equity held by affiliates of the company. Public float is also one of the key determinants for eligibility for short-form registration under the Securities Act (Form S–3 [17 CFR 239.13] and Form F–3 [17 CFR 239.33]).

[45] The company could select any date within this period to establish whether it met the public float requirement for purposes of establishing the due date for that year's Form 10–K and the subsequent year's Form 10–Q reports.

[46] 15 U.S.C. 78m(a).

[47] If our proposals are adopted, we would make appropriate conforming updates to the Codification of Financial Reporting Policies.

[48] See, for example, Release No. 33–6823 (Mar. 13, 1989) [54 FR 10306] (Revising transition report rules to conform their filing requirements to those for periodic reports).

[49] Shortly after we announced our intention to propose changes to corporate disclosure, the National Investor Relations Institute (''NIRI'') conducted a survey of its corporate members to assess initial reactions to these changes. See ''NIRI Releases Survey Results on SEC Proposed Changes to Corporate Disclosure,'' *Executive Alert* (National Investor Relations Institute, Vienna, VA), Mar. 20, 2002. Based on 406 responses, an 11% response rate, 40% of the respondents stated they would not anticipate any significant problems filing their annual reports within 60 days after the end of the fiscal year, and 46% stated they would not anticipate any significant problems filing their quarterly reports within 30 days after the end of each fiscal quarter.

adjust a company's reporting procedures, or long-term, ongoing costs?

• Would auditors, audit committees and boards of directors have sufficient time to perform their review functions?

• It is our understanding that a company's audit (or review in the case of interim financial statements) is complete or substantially complete by the time the company issues its earnings announcement. Is our understanding accurate? How often do these earnings numbers change between their announcement and the filing of the corresponding periodic report? What steps are involved, and how much time does it take, to prepare the necessary disclosures for the corresponding periodic report after the earnings announcement or the completion of the audit (or review)?

• Would the reliability and accuracy of the reports suffer as a result of shortened due dates?

• As part of our proposal, we also propose to make a conforming change to the date by which all schedules required by Article 12 [50] of Regulation S–X [51] may be filed as an amendment to the annual report. We propose to change this date from 120 calendar days to 90 calendar days for accelerated filers to maintain a 30 day period after the due date of the report to file the amendment. Should we make this conforming change?

• We do not propose to make a conforming change to the 120-day period companies have to file their definitive proxy or information statements involving the election of directors to allow the incorporation by reference of the information required by Part III of Form 10–K.[52] We request comment on whether not changing the 120-day proxy and information statement filing deadline would cause difficulties for companies or decrease the benefits of the proposals to investors because of the delay before receipt of the incorporated information. Should this period also be shortened by 30 days?

• We also are strongly considering making conforming revisions to accelerate the timeliness requirements in Regulation S–X (for example, Rules 3–01, 3–05 and 3–12 of Regulation S–X) [53] for the inclusion of financial statements by accelerated filers in other Commission filings, such as Securities Act registration statements, registration statements under Section 12 of the Exchange Act and proxy and information statements under Section 14 of the Exchange Act.[54] We preliminarily believe there would be no countervailing reasons why we should not make these conforming changes, and note that if we do not make these changes, there would be inconsistencies between these requirements and the periodic report filing requirements. Should we make these conforming revisions? Should we also make similar revisions to the financial statement filing requirements in Item 7 of Form 8–K (*i.e.,* reducing the filing deadlines by one-third from 60 to 40 days)? What ramifications might there be if we make these conforming changes, or if we do not make these changes? Should there be other exceptions or changes made for certain categories of issuers or types of filings? Should changes only be made for accelerated filers that would meet the conditions in Rule 3–01(c) of Regulation S–X? Should we provide a transition period for any such changes?

3. ''Accelerated Filer'' Definition

The public float and reporting history requirements that we propose to use to identify the companies that would be subject to accelerated filing are intended to include the companies that are least likely to find such a change overly burdensome. We are not proposing to change the due dates for annual, quarterly or transition reports for other companies, including small business issuers that file on Forms 10–KSB and 10–QSB, at this time.[55] Those companies will remain subject to the existing filing deadlines. The proposed public float and reporting history requirements are based on the current eligibility requirements for registration of primary offerings for cash on Form S–3.[56] As these companies can take advantage of short-form registration, including the resultant benefits of incorporation by reference and quick access to the capital markets through ''shelf registration,'' [57] a shortening of the deadlines for these companies seems appropriate. In identifying companies that would be subject to this new requirement, we thought it would be appropriate to use a pre-existing threshold to reduce regulatory complexity.

If a company was not already an accelerated filer, a company would determine its public float for purposes of determining whether it will become an accelerated filer as of a date no more than 60 and no less than 30 days before the end of its fiscal year. Hence, a company that meets the float requirement on this determination date would be subject to shortened deadlines for that year's Form 10–K and the reports on Form 10–Q filed in the company's next fiscal year, if it also meets the reporting history requirements on the date the reports are due. If a company meets the public float requirement on the determination date but does not yet meet the reporting history requirements, it would not become an accelerated filer until it does meet the reporting requirements, which could occur at any time during the next fiscal year.

Once a company became an accelerated filer, it would remain an accelerated filer subject to shortened deadlines unless it became eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.[58] In that case, the issuer would no longer be an accelerated filer unless it subsequently became ineligible to use Forms 10–KSB and 10–QSB and once again met the public float and reporting history requirements.

For example, if in December, 2002, a company with a December 31st fiscal year end determines that it meets the public float requirement but has not filed its first annual report, its annual report for fiscal year 2002, due in 2003, would be subject to a 90 day deadline. However, once it filed its 2002 annual report, and assuming by that time it had also been subject to the Exchange Act reporting requirements for 12 months, the company would now be subject to accelerated deadlines for subsequent Form 10–Q reports filed during the 2003 fiscal year and all annual and quarterly reports filed thereafter. If, in subsequent years, the company's public float fell to the point that it became eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports, it would no longer be an accelerated filer subject to accelerated deadlines. If the company subsequently became ineligible to use Forms 10–KSB and 10–QSB and once

[50] 17 CFR 210.12–01 *et seq.*

[51] 17 CFR 210.1–01 *et seq.*

[52] See General Instruction I.G(3) of Form 10–K.

[53] 17 CFR 210.3–01, 3–05 and 3–12.

[54] 15 U.S.C. 78n.

[55] The definition of ''small business issuer'' excludes issuers with a public float of $25 million or more. As a result, all small business issuers are effectively excluded from our proposal.

[56] See General Instructions I.A.3 and I.B.1 of Form S–3.

[57] ''Shelf registration'' is the commonly used term for delayed offerings under Securities Act Rule 415 [17 CFR 230.415]. Rule 415 permits offerings to be delayed until some point determined by the registrant after effectiveness of the relevant registration statement.

[58] See Item 10(a)(2) of Regulation S–K [17 CFR 228.10(a)(2)] for the conditions for entering and exiting the small business reporting system. A reporting company that is not a small business issuer must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer for purposes of Form 10–KSB and Form 10–QSB.

again met the public float and reporting history conditions, it would again become an accelerated filer subject to accelerated deadlines.

Currently, companies are required to disclose on the cover page of their annual reports on Form 10–K the company's public float as of a specified date within 60 days before filing. To assist the Commission and investors in evaluating whether a company is subject to accelerated deadlines, we propose to revise this requirement. For a company that was not previously an accelerated filer, we would require disclosure of the public float computed as of a date no more than 60 and no less than 30 days before the last day of the company's most recently completed fiscal year to determine whether the company was an accelerated filer, and the date used for purposes of that computation. If a company was previously an accelerated filer, we would require disclosure of the public float as of a specified date no more than 60 and no less than 30 days before the last day of the company's most recently completed fiscal year.

Questions Regarding Our Proposed Definition of Accelerated Filer

- Would the proposed public float and reporting history requirements exclude the companies that are the least able to comply with shortened deadlines?
- Would different filing deadlines for different companies confuse companies and/or investors?
- Should all reporting companies be subject to shortened filing deadlines? [59] Is the exclusion of small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers might incur from shortened deadlines? Should all reporting companies be subject to the shortened filing deadlines, except for companies eligible to file under our small business reporting system? Are there additional or alternate factors we should consider?
- Should non-accelerated filers be subject to deadlines shorter than the current deadlines, but not as short as those proposed for accelerated filers (*e.g.,* 75 days for annual reports and 40 days for quarterly reports)?
- Would our proposed changes affect some companies or industries more than others (such as those with complex transactions or accounting or those that regularly access the debt markets instead of equity markets, and therefore may not have a public float)? Should we make exceptions to the proposed due dates for certain companies or industries? If so, which ones and why?
- Currently, foreign private issuers must file their annual reports on Form 20–F within six months after the end of their fiscal years. [60] We are not proposing today to change that interval,[61] although we are continuing to consider this issue and Exchange Act filing requirements generally for foreign issuers. If today's proposal is adopted, the discrepancy between the filing deadlines for larger seasoned U.S. issuers and those for foreign private issuers will increase. The speed with which foreign issuers can capture and analyze information has also probably improved since the six-month interval was established. Foreign issuers are subject to similar obligations as to the information to be reported. There are some categories of information, for example executive compensation, where requirements for foreign issuers are less onerous. Foreign issuers that do not prepare their financial statements in accordance with U.S. GAAP, however, must go through the additional step of preparing a reconciliation of their financial statements to U.S. GAAP. In light of the requirements of Form 20–F and the situation of foreign private issuers, should the deadline for annual reports on Form 20–F be shortened? If so, should it be shortened to five months or four months after the end of the company's fiscal year? To some other period? What would be the impact of such a change?
- Should the public float requirement be higher or lower than that currently proposed? If higher, how would that level be consistent with the level currently required for short-form registration on Form S–3 (or should that level also be raised)? If a different level is appropriate, what levels should be considered, and why?
- Is the method for determining the measurement date for the public float test clear? Is the delineation of which reports would be subject to accelerated deadlines appropriate? Should the determination of which reports would be subject to accelerated deadlines be made at a point other than a date no more than 60 and no less than 30 days before the last date of the issuer's fiscal year?
- While we have proposed to use the public float test, we are seriously considering alternative thresholds and request comment on such alternatives. For example, should all reporting companies be subject to shortened filing deadlines, except for companies below a certain revenue or asset threshold (for example, $5 million)? Should we accelerate the filing dates only for companies whose equity securities are listed or actively traded on an exchange or Nasdaq? How would we define ''actively traded?'' Are there other alternatives that will balance the need for timely, high quality disclosure with the ability of companies to prepare the disclosure without undue burden?
- Should the reporting history requirement be shorter or longer than proposed? Is a history of preparing reports relevant to the ability of a company to report on an accelerated timeframe? Is less or more experience needed than that proposed?
- We are proposing the requirement that a company file at least one annual report to provide reasonable opportunity for a company to gain enough filing experience before it is subject to shortened deadlines. Is such experience relevant to prepare information in a shorter timeframe?
- Is the proposed method for entering and exiting accelerated filing status that relies on the small business issuer reporting system clear? Is it appropriate? In the alternative, should there be some other mechanism for companies to enter and exit accelerated filer status? For example, should a company be permitted to exit accelerated filer status if its public float has fallen below some specified threshold (*i.e.,* $25 million or $50 million) and has remained below that threshold for some specified period of time? Should a threshold other than public float be considered? What factors should be considered in formulating such an alternative?
- Should we require a company to provide notice that it is entering or exiting accelerated filer status? Should such a notice be through a filing on Form 8–K and/or through some other method or combination of methods to ensure broad dissemination of this announcement? Would the lack of an affirmative requirement to announce a change in a company's filing status disadvantage investors or the markets?

4. Impact of Accelerated Filing Deadlines

The proposed shortening of the due dates for quarterly and annual reports could create the risk that more companies would file their reports late or would need a filing extension.

[59] In our 1998 release, we solicited comment on accelerating deadlines for all reporting companies. See note 26 above.

[60] In addition, foreign private issuers that undertake registered offerings under the Securities Act are effectively subject to a three-month reporting deadline for their audited annual financial statements. See Item 8.A.4 of Form 20–F.

[61] In our 1998 release, we proposed to shorten the interval to five months. See note 26 above.

Moreover, if a company was late in filing its reports, it would lose the availability of short-form registration for at least one year from the date of the late filing. Being late also could render Securities Act Rule 144 temporarily unavailable for security holders' resales of restricted and control securities, and make new filings on Form S–8 temporarily unavailable for resales of employee benefit plan securities.[62]

Questions Regarding the Impact of Accelerating Filing Deadlines

- Are there ways we can minimize these negative effects aside from continuing to permit companies to rely on Exchange Act Rule 12b–25 for extensions of the annual report and quarterly report deadlines?[63]
- Would the current filing extension periods remain sufficient under accelerated deadlines? Should these periods be shortened (for example, to 10 days for an annual report or three days for a quarterly report) to conform to the accelerated filing due dates of these reports and to ensure timely filings? Would shorter periods provide companies with enough time to make Exchange Act Rule 12b–25 useful? Instead, should these periods be lengthened (for example, to 20 days for an annual report or 10 days for a quarterly report) to provide companies more time to file their reports because of the effect of accelerated filing due dates? What factors should we consider in determining whether and by how much these periods should be changed?
- Would companies not subject to the accelerated deadlines find it more difficult to retain the necessary outside advisors to prepare their reports in the appropriate timeframe? Would the quality of their reports suffer?
- Would companies that currently integrate their annual or quarterly reports to security holders with their Form 10–K or Form 10–Q reports, or publish and mail both in a single document, encounter difficulty in meeting the accelerated due dates?[64]
- Are there special circumstances associated with the preparation of transition reports that weigh against reducing the filing periods for those reports?

5. Transition Period

We expect that, if adopted, the proposal would have a delayed effectiveness date to provide affected companies with time to prepare for the transition to shortened due dates. Companies could, of course, voluntarily file their reports sooner during this transition period, just as they may today. If we adopt the proposal, we expect to make the proposal effective for companies that meet the public float and reporting history requirements as of the end of their first fiscal year ending after October 31, 2002. We request comment on the factors we should consider in selecting an appropriate transition period.

B. Website Access to Information

1. Reasons for Proposal

Widespread access to timely corporate information promotes the efficient functioning of the secondary markets by enabling investors to make informed investment and voting decisions. Further, ready access to Exchange Act information is critical to short-form registration of securities offerings by seasoned issuers under the Securities Act. Our system of short-form registration, which is available in varying degrees for domestic issuers on Forms S–2, [65] S–3, S–4,[66] and S–8,[67] allows certain information about the company conducting the offering to be incorporated by reference from the company's Exchange Act reports without, in many instances, separate delivery of these reports. One rationale for these abbreviated registration forms is that the information in a company's Exchange Act reports already has been adequately disseminated and evaluated by the marketplace.

The development of the Internet has revolutionized information production, availability, and dissemination.[68] The increased availability of information has helped to promote transparency, liquidity, and efficiency in our capital markets. One of the key benefits of the Internet is that companies can make information available to many investors and the financial markets quickly and in a cost-effective manner. Online access to Internet information also helps to democratize the capital markets by enabling many small investors to access corporate information just as readily as large institutional investors.[69]

We have taken a number of steps to encourage companies and market intermediaries to take advantage of electronic media to communicate with, and deliver information to, investors.[70] We also have relaxed restrictions on communications by companies with security holders and the financial markets in connection with business combinations and similar transactions, thereby allowing companies greater flexibility to communicate, including via the Internet.[71] For 18 years, we have been continually improving and modernizing electronic access to companies' Exchange Act reports through our EDGAR system, including by providing Internet access to these reports.[72]

An efficient and economical method for companies to make information available about themselves to many investors is through an Internet website. In addition to other existing sources of company information, such as our website, a company's website is often an obvious place for investors to find information about a company. Investors following particular companies can use electronic devices to alert them to the posting of new information about the companies on a website. Many companies, realizing the benefits of this technology for information dissemination, have established websites to furnish company and industry information. As discussed

[62] Securities Act Rule 144 [17 CFR 230.144] requires that for such a resale to be valid, the issuer of the securities must have made all filings required under the Exchange Act during the preceding 12 months. Form S–8 [17 CFR 239.16b] requires that an issuer be current in its reporting for the last 12 calendar months (or such shorter period that the issuer was required to file such reports and materials). If a company was late in filing its reports, the company would lose Rule 144 eligibility and eligibility to file a Form S–8 during the time that the company was not current in its reporting.

[63] 17 CFR 240.12b–25. If a company complies with Rule 12b–25, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. For quarterly reports, the company can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date.

[64] See General Instructions G and H of Form 10–K and General Instructions D and E of Form 10–Q.

[65] 17 CFR 239.12.

[66] 17 CFR 239.25.

[67] 17 CFR 239.16b.

[68] See, for example, note 25 above.

[69] See, for example, Ianthe Jeanne Dugan, ''Small Investors United by Web Find New Power,'' The Washington Post, May 30, 1999, at A01.

[70] We have issued a series of interpretive releases to encourage the use of electronic media to satisfy document delivery requirements under the federal securities laws. See, for example, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the ''1995 Release''); Release No. 33–7289 (May 9, 1996) [61 FR 24652]; and Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Release''). Last October, we announced that we are currently reviewing whether our previous pronouncements on electronic delivery should be modified. *See In the Matter of The American Separate Account 5 of The American Life Insurance Company of New York,* Release No. 33–8027 (Oct. 25, 2001) (available at *www.sec.gov*).

[71] See Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408]. In that release, we adopted a new regulatory system that relaxes restrictions on communications in cash tender offers, mergers, exchange offers, and proxy solicitations.

[72] Numerous third-party vendors also make information filed with the Commission electronically available to investors, but many charge fees for this service.

below, a substantial number of these companies also already provide access to their Commission filings through their websites.

Modernizing the disclosure system under the federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for companies to make investors aware of the different sources that provide access to company information.

2. Description of Proposal

We encourage companies to make their Commission filings as broadly available to the public as possible. In particular, we encourage every reporting company to make its filings available to investors free of charge on its Internet website, if it has one, as soon as reasonably practicable after, and in any event on the same day as, such material is electronically filed with or furnished to the Commission. We applaud the efforts already being made by many reporting companies to provide access to their Commission filings through their websites. We would like more companies to make similar efforts. We also would like to encourage companies to disseminate their Exchange Act reports via their websites to promote consistent and relative uniform access to these reports in the place where investors may most likely look for them. Website access to Exchange Act reports helps to promote consistent, direct, timely, and more widespread access of information to investors and the financial markets. It also furthers the proper functioning of the integrated disclosure and short-form registration systems. However, we do not want to impose undue burdens and expenses on companies that may not have the resources to provide such access.

Accordingly, we propose to require companies that would be subject to our proposed accelerated filing deadlines (that is, companies with at least a $75 million public float, that have been subject to the Exchange Act reporting requirements for at least 12 calendar months, and that have filed at least one annual report) to disclose in their annual reports on Form 10–K the following: [73]

- That the public may read and copy the company's filings at our Public Reference Room, and can access information electronically filed on our website; [74]
- The company's website address, if it has one; [75]
- Whether the company makes available free of charge on its website, if it has one, its annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and all amendments to those reports as soon as reasonably practicable after, and in any event on the same day as, such material is electronically filed with or furnished to the Commission;
- If the company does not make its filings available in this manner, the reasons why it does not do so (including, where applicable, that it does not have an Internet website);
- If the company does not make its filings available in this manner, one or more locations where the public can access these filings electronically immediately upon filing, if any, and whether there is a fee for such access; and
- Whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

We understand that companies currently provide website access to their Exchange Act reports in a variety of ways, including by establishing a hyperlink to its Exchange Act reports via a third-party service in lieu of maintaining the reports itself.[76] In this case, we encourage companies to hyperlink directly to the company's reports (or to a list of its reports) instead of just to the home page of the third-party service. Currently, hyperlinking to our EDGAR system would not allow a company to state that it provides website access to its reports as soon as reasonably practicable after, and in any event on the same day, as those reports are filed. This is because filings on the Commission's EDGAR website currently are posted after a 24-hour delay. Similarly, if a company did not provide website access to its reports in the manner proposed, reference to our EDGAR website would not currently qualify as one of the locations where those filings are available immediately in electronic form. We anticipate eliminating this 24-hour delay for filings posted to our website, thus providing real-time posting of disseminated filings.

Whether a company provides access to its Exchange Act reports either directly or through a third-party service, we recognize that some companies display the reports in electronic formats (for example, PDF) other than the official electronic format used to transmit the filing to our EDGAR system. In fact, we encourage companies to do so if alternative formats enhance readability and accessibility of the reports, so long as all of the information in the reports remains retrievable. However, the use of a particular medium to access the reports should not be so burdensome that the intended recipients cannot effectively access the information provided.[77]

We also encourage companies at a minimum to provide website access to their previous reports for at least a twelve month period. Of course, we encourage companies to provide access to their previous reports on an appropriately archived portion of their website over an even longer timeframe. We also encourage companies to provide website access to all of their filings with the Commission, including their filings under the proxy rules and their Securities Act filings.

Questions Regarding Our Website Access Proposal

- Would our proposal aid in encouraging companies to make information available in a variety of locations and hence make corporate information more widely accessible and disseminated? Would investors find this information useful? Would the proposed disclosure requirement provide sufficient notice to investors of the available sources of corporate information?
- The proposed new disclosure requirement only would apply to companies subject to the accelerated filing deadlines. Is excluding small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers would incur due

[73] See proposed revisions to Item 101(e) of Regulation S–K.

[74] This disclosure element is currently required of electronic filers in Securities Act registration statements by Item 101(e) of Regulation S–K. In this regard, our proposed amendments also would require this disclosure element for accelerated filers that file annual reports on Form 10–K.

[75] The inclusion of the company's website address would not, by itself, include or incorporate by reference the information on the site into the company's Commission filing (unless the company otherwise acts to incorporate the information by reference). In this instance, we would not consider the presence of the Internet address to make the company's website part of the company's filing if the company takes reasonable steps to ensure that the address is inactive (for example, by removing ''a>href'' tagging) and includes a statement to denote that the address is an inactive textual reference only. See, for example, the 2000 Release, note 70 above, at n.41 and the accompanying text.

[76] In the 2000 Release, we provided interpretive guidance on the possible effects of hyperlinking to a third party website. See the 2000 Release, note 70 above, at n.48 and the accompanying text.

[77] See, for example, the 1995 Release, note 70 above, at n. 24 and the accompanying text.

to the proposed new requirement? Should all reporting companies be subject to the proposed new requirement?

• The proposal only would apply to companies that file on Form 10–K. Should we also include foreign private issuers that file on Form 20–F? Would expanding this requirement be overly burdensome?

• What are the expected additional costs of posting Exchange Act reports on company websites, either directly or by hyperlinking to a third-party service? Please specify the types of costs that would be incurred and quantify them, if possible.

• Would the proposed new disclosure be overly burdensome? Should additional disclosure be required? Is some of the proposed disclosure not necessary or appropriate?

• Is additional guidance necessary in how to comply with the proposal? If so, in what areas would guidance be helpful?

• Should the disclosure appear in other company filings, such as quarterly reports? We encourage companies also to put this disclosure in their annual report to shareholders.

• Our proposal would require disclosure of a company's Internet address. Is this requirement helpful to investors? What are the ramifications of requiring disclosure of a company's website address? Are there reasons why a company would not want to provide disclosure of its website address?

• We have not proposed a conforming change to require disclosure of a company's website address in Securities Act registration statements. Currently, companies are only encouraged to provide their website address in these documents. We request comment on whether we should make this conforming change. Would there be any negative impacts from this change?

• Should a company be required to disclose whether it provides access to all of its Exchange Act filings (and not just its periodic and current reports)? Should access to exhibits or supplemental schedules be excluded? Should Securities Act filings be included? Should information under the proxy rules be included, or at least the information required by Part III of Form 10–K incorporated by reference from a company's definitive proxy or information statement?

• We recognize that not all investors may have ready access to the Internet. Are there additional ways to facilitate access to Commission information for those without Internet access?

3. Impact of Website Proposal

The participants at the financial disclosure and auditor oversight roundtables noted that many companies already provide website access to their Exchange Act reports as a matter of good corporate practice.[78] Our Office of Economic Analysis examined a sample of 152 companies with at least a $75 million public float to determine how many of these companies have websites and how many already provide access to their Commission filings through their websites. According to this analysis, all of the companies sampled maintained an Internet website. Approximately 83% of those with websites provided some form of access to their Commission filings through their websites, either via a hyperlink with a third-party service providing real-time access to the filings (45%), by posting the filings directly on their websites (29%) or via a hyperlink to our EDGAR database (15%). Not all of the companies providing access directly on their websites provided access to all of their Exchange Act reports.

While we believe that this proposal would benefit investors of all companies, we seek to minimize any new costs or burdens that affected companies may incur. Therefore, we are only proposing this new requirement for companies subject to the accelerated filing deadlines. According to available data, most of these companies already provide some form of Internet access to corporate information. As with our proposal to accelerate filing deadlines, disclosure of real-time access to the filings of these companies may be particularly appropriate given their ability to rely on short-form registration.

4. Transition Period

As with the proposal to shorten the deadlines for quarterly and annual reports, we anticipate that a transition period would be necessary for this proposal, if adopted. This transition period would give affected companies sufficient time to modify their websites or make other arrangements as necessary to provide the new disclosure. Accordingly, we propose to make the new disclosure requirement effective three months after the date of adoption. We request comment on the appropriate length of this transition period.

[78] In addition, according to the NIRI survey, 89% of the respondents did not anticipate that they would encounter any significant problems if required to post Exchange Act reports on their websites at the same time they transmitted the filings to the Commission. See note 49 above.

C. General Request for Comment

We invite any interested person wishing to submit written comments on the proposed amendments, and any other matters that might have an impact on the proposed amendments, to do so. We specifically request comment from companies that would be subject to the accelerated filing deadlines and new website disclosure requirements, investors, and other users of Exchange Act information, as well as facilitators of capital formation, such as underwriters. We also specifically request comment on any conforming changes that should be made to rules and regulations under the Securities Act or Exchange Act for other Commission filings.

III. Paperwork Reduction Act

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[79] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[80] The titles for the collection of information are ''Form 10–K'' and ''Form 10–Q.'' 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.

Form 10–K (OMB Control No. 3235–0063) was adopted pursuant to Sections 13 and 15(d) of the Exchange Act and prescribes information that a registrant must disclose annually to the market about its business. Preparing and filing an annual report on Form 10–K is a collection of information.

Form 10–Q (OMB Control No. 3235–0070) was adopted pursuant to Sections 13 and 15(d) of the Exchange Act and prescribes information that a registrant must disclose quarterly to the market about its business. Preparing and filing a quarterly report on Form 10–Q is a collection of information.

We currently estimate that Form 10–K results in a total annual compliance burden of 4,035,120 hours and an annual cost of $3,631,608,000. The burden was calculated by multiplying the estimated number of respondents filing Form 10–K annually (9,384) by the estimated average number of hours each entity spends completing the form (1,720 hours). We estimate that 25% of the burden is prepared by the respondent ($9{,}384 \times 1{,}720 \times 0.25 = 4{,}035{,}120$). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average

[79] 44 U.S.C. 3501 *et seq.*

[80] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

cost of $300 per hour (9,384 × 1,720 × 0.75 × $300 = $3,631,608,000). This portion of the burden is reflected as a cost.

We currently estimate that Form 10–Q results in a total annual compliance burden of 909,364 hours and an annual cost of $818,427,600. The burden was calculated by multiplying the estimated number of reports on Form 10–Q filed annually (26,746) by the estimated average number of hours each entity spends completing the form (136 hours). We estimate that 25% of the burden is prepared by the respondent (26,746 × 136 × 0.25 = 909,364). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour (26,746 × 136 × 0.75 × $300 = $818,427,600). This portion of the burden is reflected as a cost.

A. Summary of Proposed Amendments

The proposed amendments, if adopted, would accelerate the filing deadlines of quarterly reports on Form 10–Q and annual reports on Form 10–K by companies subject to our proposed public float and reporting history requirements. The proposed amendments, if adopted, also would require those companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. If a company does not provide website access in this manner, it must also disclose the reasons why it does not do so, and where else investors can access its Exchange Act reports. We also propose to require companies to disclose their website address if they have one. We believe that the proposed revisions would promote direct, uniform and more widespread dissemination of timely information to investors and the markets and further the purposes of short-form registration under the Securities Act.

B. Reporting and Cost Burden Estimates

We estimate that approximately 59% of Form 10–K and Form 10–Q respondents, or 5,494 respondents, would satisfy our proposed definition of accelerated filers, and thus would be subject to accelerated deadlines and the requirement to make the enhanced disclosure in their Form 10–K regarding website access to their Exchange Act reports. [81]

For our proposal regarding filing deadlines, the amount of information required to be included in Exchange Act reports would remain the same. Accordingly, for purposes of the Paperwork Reduction Act, our preliminary estimate is that the amount of time necessary to prepare the reports, and hence, the total amount of burden hours, would not change. However, there is the possibility that preparing these reports on a shorter timeframe may result in the respondent investing more resources in technology, relying to a greater extent on outside advisors, or that the average cost associated with the portion of the burden prepared by outside advisors may increase. Accelerating the filing deadline may, on the other hand, increase efficiencies in preparing these reports and decrease the burden over time. We request comment on whether, for purposes of the Paperwork Reduction Act, the burden will increase or decrease. If so, by what amount? Would the proposal have any other effect on the total compliance burden?

We estimate that the preparation of the required disclosure regarding information access in a respondent's Form 10–K would add 0.50 burden hours to each annual report on Form 10–K. Thus, we estimate this aspect of the proposal will add an additional 2,747 burden hours to the current Form 10–K (0.50 hours × 5,494 respondents). We estimate that 25% of the burden is prepared by the respondent (0.50 × 5,494 × 0.25 = 687). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour (0.50 × 5,494 × 0.75 × $300 = $618,075). This portion of the burden is reflected as a cost.

As a result, we estimate the total annual compliance burden for Form 10–K after our proposed revisions to be 4,035,807 hours and an annual cost of $3,632,226,075, an increase of 687 hours and $618,075 in cost. Compliance with the disclosure requirement would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential. We do not believe that the imposition of this requirement would alter significantly the number of respondents that file on Form 10–K.

C. Request for Comment

We request comment in order to (a) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–08–02. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–08–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[81] We arrived at this estimate by multiplying the approximate number of respondents that file on Form 10–K that do not only have a class of securities registered under Section 15(d) of the Exchange Act (and hence are less likely to have listed equity and therefore a public float) (7,384) by 74.4%, which represents the percentage of companies in Standard & Poors Research Insight Compustat Database with a market capitalization above $75 million out of the total number of companies in the Compustat Database with a market capitalization above $25 million (the upper limit for small business filers on Form 10–KSB). It is our understanding that the data in the Compustat Database is derived principally from larger companies, so our estimate may overstate the actual percentage of companies that would be affected by the proposals.

IV. Cost-Benefit Analysis

The proposed amendments are part of our initiative to modernize and improve the regulatory system for periodic disclosure under the Exchange Act. We are sensitive to the costs and benefits that result from our rules. In this section, we examine the benefits and costs of our proposed amendments. We request that commenters provide views and supporting information as to the benefits and costs associated with the proposals. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified.

The proposed rule and form changes would enhance the timeliness and availability of disclosure in Exchange Act reports in two ways:

- Shortening the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements; and
- Requiring companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Acceleration of Quarterly and Annual Report Due Dates

The due dates for quarterly and annual reports by domestic issuers have not changed in over 30 years, despite enormous advances in information technology and productivity. Many companies now routinely release quarterly and annual results well before they file their formal reports with us. However, the presentation of these results vary and may not contain all of the information found in a company's Exchange Act reports. Delayed filing of reports means investors often make decisions without the more extensive information in the company's Exchange Act reports.

Shortening the due dates for quarterly, annual and transition reports would provide many benefits. Most importantly, it would accelerate the delivery of information to investors and the capital markets, enabling them to make more informed investment and valuation decisions.[82] This helps the capital markets function more efficiently, which means more efficient valuation and pricing. Shortening the due dates would help shorten the information gaps between the end of a fiscal year or quarter, a company's announcement of earnings results and the filing of more extensive information in its periodic reports. The information in Exchange Act reports, due to its required nature and the liability to which it is subject, provides a verification function against other statements made by the company. Investors can judge previous informal statements by the company against the more extensive disclosure provided in the reports, including financial statements prepared in accordance with generally accepted accounting principles. Accelerating the availability of this information thus shortens the delay before this verification can occur. In addition, the information in these reports often is used in comparative and other quantitative financial analyses. Accordingly, earlier availability of this information may decrease the time before these analyses can occur.

Also, the accelerated filing of reports could serve to make them more relevant to investors, thereby increasing the use of such reports and investor scrutiny of them. Increased focus on and scrutiny of the reports may in turn cause an increase in their quality. Moreover, seasoned issuers incorporate information from their Exchange Act reports in their Securities Act registration statements. Hence, investors buying in these public offerings, particularly in on-going shelf offerings, would also benefit from more timely disclosure. All of these benefits are difficult to quantify.

The proposed amendments may increase the costs to the affected reporting companies, although companies may, and some already do, report within the proposed deadlines voluntarily. Specifically, the amendments may increase the costs in preparing quarterly and annual reports because although companies already must prepare their quarterly and annual reports, they may have to delay other projects or use additional resources, including in-house personnel, outside legal counsel and outside auditors to prepare the information in a shorter timeframe. These costs may vary by company given their individual circumstances, such as the complexity of their business or industry. Some companies also may need to make additional capital investments, such as in additional information systems, to prepare their reports in a shorter timeframe.

We anticipate that some, and perhaps most, of these costs may be short-term or one-time costs to adjust a company's reporting procedures to a shorter timeframe. Our proposed requirements that limit the application of shortened due dates only to companies with a minimum public float and reporting history also may help to minimize the impact on companies that may find it more difficult to bear these costs. In addition, it is our understanding that a company's audit (or review in the case of interim financial statements) is complete or substantially complete by the time it issues its earnings announcement, which often occurs today well before the proposed filing due dates. We request comment on the type, amount and duration of these costs.

The proposed amendments may have indirect effects as well. Preparing the information on a 33% shorter timeframe could create a risk that the quality or accuracy of the information would diminish. We do not propose to change the liability standards for these reports, nor do we propose to decrease the amount of information required in these reports. Investors and the capital markets may suffer if quality or accuracy diminished, causing the markets to function less efficiently and investment decisions to be impaired. Another possible effect is that more affected companies may be late in filing their periodic reports, or more companies may request additional time to file their reports under Exchange Act Rule 12b–25. Either result could delay the delivery of information to investors and the market. Moreover, if a company was late in filing its reports, it would lose eligibility for short-form registration for at least one year, and Securities Act Rule 144 and Form S–8 would be temporarily unavailable during the period of noncompliance. This could negatively affect shareholders reselling or attempting to resell securities or employees whose securities are subject to Form S–8.

Smaller companies are likely to be more sensitive to any increased costs in preparing their reports. These entities may not have the infrastructure and resources available or necessary to prepare their reports on a shorter timeframe. As a result, shorter timeframes could discourage companies near the accelerated filer threshold from becoming public companies or accessing the public securities markets. This may adversely impact their ability to raise capital, the ability of their investors to obtain adequate information and the liquidity of their securities. Our proposal limits the application of

[82] Some academic evidence shows that annual reports on Form 10–K filed through the EDGAR system provide incremental information to the market even after the firm has made an earnings announcement. See, for example, Daqing Qi, Woody Wu, and In-Mu Haw, 2000, ''The Incremental Information Content of SEC 10–K Reports Filed Under the EDGAR System,'' *Journal of Accounting, Auditing, and Finance* 15 (Winter) : 25–45.

shortened deadlines to issuers with a certain public float and reporting history, effectively excluding all issuers that may rely on our small business reporting system. We request comment regarding these matters, including empirical data if possible.

We considered several regulatory alternatives in formulating our proposals. In our 1998 release proposing Securities Act reform, we proposed requiring companies to report selected financial information on Form 8–K on the earlier of the date they issue a press release containing earnings information or either the date that is 30 days after the end of each of the first three quarters of their fiscal year or 60 days after the end of their fiscal year. However, this information would not contain the more extensive information found in the quarterly and annual periodic reports, and in many instances only would repeat the information in the earnings press release. Moreover, we have subsequently adopted Regulation FD to address some of the concerns over selective disclosure of information.[83] We also considered linking the filing of a company's annual and quarterly reports to its public earnings announcements, but we were concerned that this only would serve to delay earnings releases, which may not be helpful to investors.

We have been considering shortening filing deadlines for all reporting companies, although we do not propose to do so at this time. Although we believe investors in less large or unseasoned companies may want and benefit from more timely disclosures just as much as investors in larger, listed companies, we are concerned that this may impose undue burden and expense on these companies. Accordingly, we propose shortening the filing deadlines only for companies with a minimum public float or reporting history. Of course, smaller companies may file their reports earlier voluntarily. We have been considering several different conditions for shortening deadlines, but based on our research and past experience, we believe the public float test currently used in Form S–3 is consistent with our purposes. We request comment regarding the relative costs and benefits of pursuing alternative regulatory approaches.

B. Website Access to Information

Widespread access to timely company information promotes the efficient functioning of the capital markets. Also, ready access to Exchange Act information is critical to short-form registration of securities offerings by seasoned issuers. One rationale for short-form registration is that the information in a company's Exchange Act reports already has been adequately disseminated and absorbed by the market place.

Many aspects of our disclosure system were adopted well before the revolutions in information technology brought about by the Internet. In modernizing and improving our disclosure system, we should recognize the benefits of the Internet in promoting the more widespread dissemination of information. An efficient and cost effective method for companies to make information available about themselves is through their Internet website. In addition to other existing sources of company information, such as our website, a company's website is one obvious place for many investors to find information about a company. We encourage companies to provide investors with website access to their Exchange Act reports. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for investors to know of additional sources where they can access company information.

Providing this disclosure and encouraging companies to post their Exchange Act reports on their websites would provide many benefits. The proposal protects investors by alerting them to sources where they can obtain direct and easy access to the information they should have to make informed investment and valuation decisions. It would help promote consistent, direct, timely and more widespread access of information to investors and the markets, and further the proper functioning of the integrated disclosure and short-form registration system. An efficiently functioning registration system facilitates capital formation. Not all reporting companies now make their Exchange Act filings available through their websites, and not all the ones that do make information available provide access in real-time. Our proposal would encourage uniform best practices to aid in an investor's search for timely information, thereby potentially reducing the costs to gather such information. For those companies that elect not to provide website access, our proposed disclosure requirement would provide investors with the information necessary to locate this information on an ongoing basis. These potential benefits are difficult to quantify. We request comment on our assessment of these benefits, including information on the ability to quantify these benefits.

The proposed amendments may also increase the costs to affected companies, although we seek to minimize those costs. Companies would be required to include minimal additional disclosure in their annual report on Form 10–K. For purposes of the Paperwork Reduction Act, we estimate this will result in a total additional burden of 687 hours and $618,075 in additional costs for all affected companies. Our proposal would only apply to companies that meet our proposed public float and reporting history requirements, which should help to minimize the impact on companies potentially less able to bear additional costs. Our proposal also would not require a company to provide website access. Of course, we encourage all reporting companies to make their reports widely available through their websites. We request comment on the number of issuers our proposal would impact and the amount of any additional costs they may incur.

We considered several regulatory alternatives in formulating our proposal. Many companies already voluntarily provide at least some access to their filings on their websites, but not all provide access to all of their filings or in real-time. Also, our proposed disclosure requirement for companies that do not provide website access provides investors with information on where else they can obtain access to these filings on an ongoing basis. We considered requiring website access to company reports as an additional eligibility requirement for short-form registration under the Securities Act. However, we were concerned that the potential loss of form eligibility from non-compliance with the requirement would be overly burdensome on companies. We request comment regarding the relative costs and benefits of pursuing alternative regulatory approaches.

V. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [84] we solicit data to determine whether the proposed amendments constitute ''major'' rules. Under SBREFA, a rule is considered

[83] See 17 CFR 243.100–103.

[84] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

''major'' where, if adopted, it results or is likely to result in:

• an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);

• a major increase in costs or prices for consumers or individual industries; or

• significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act [85] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments are intended to improve the timeliness and accessibility of Exchange Act reports to investors and the financial markets. We anticipate these proposals would enhance the proper functioning of the capital markets. This increases the competitiveness of companies participating in the U.S. capital markets. The proposals would affect certain companies and not others, so the impacts of the proposal may not be equally distributed. Also, if not all competitors in a given industry are subject to accelerated deadlines, information about some competitors may be disclosed ahead of other competitors (for example, the filing of material contracts).[86] This could potentially give some competitors an informational advantage. If the proposals to shorten filing deadlines increased the number of companies who filed their reports late, this could reduce the number of companies eligible for short-form and delayed shelf registration. For our website access proposal, companies that would be subject to accelerated deadlines may incur increased minimal costs from providing additional disclosure that would not be incurred by companies not subject to these deadlines.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act [87] and Section 3(f) of the Exchange Act [88] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements in light of technological advances. The purpose of the amendments is to promote greater timeliness and accessibility of this information so that investors can more easily make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect negative effects, such as discouraging or precluding some companies near the threshold from using short-form registration, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act. [89] This IRFA involves proposed amendments to the rules and forms under the Securities Act and the Exchange Act to:

• Shorten the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements; and

• Requiring companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Reasons for, and Objectives of, Proposed Amendments

The proposed amendments have two primary objectives. First, we propose to accelerate disclosure of information to investors and the capital markets by shortening the due dates of quarterly and annual periodic reports and transition reports for domestic reporting companies that meet certain minimum public float and reporting history requirements. These due dates have not changed in over 30 years, despite advances in information technology and productivity and increases in the pace of and need for communications in the capital markets. Accelerating the delivery of information to the capital markets would help enhance the efficient functioning of those markets. Many companies routinely release quarterly and annual financial results before they file their formal reports with us. However, the presentation in these results vary and may not contain all of the more extensive information found in the company's formal reports. Shortening the deadlines would shorten this information gap, thereby increasing the relevancy of those reports. Investors buying in public offerings of issuers that incorporate their Exchange Act reports in their Securities Act registration statements also would benefit from more timely disclosure.

Second, we wish to encourage more direct and widespread accessibility and dissemination of timely information to investors and the capital markets in a variety of locations. Accordingly, we propose to require companies subject to the accelerated filing deadlines to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. Our proposal would help promote consistent, direct, timely and more widespread access of information to investors and the markets and further the proper functioning of the integrated disclosure and short-form registration system. Not all public companies currently make their filings available on their websites, and not all provide access to all of their reports or in real-time. Our proposal would thus promote greater access for investors.

B. Legal Basis

We are proposing the amendments to the forms and rules under the authority set forth in Sections 3(b) and 19(a) of the

[85] 15 U.S.C. 78w(a)(2).

[86] The Commission does have rules in place that allow for the non-disclosure of certain limited information filed with the Commission. See, for example, Exchange Act Rule 24b–2 [17 CFR 240.24b–2].

[87] 17 U.S.C. 77b(b).

[88] 15 U.S.C. 78c(f).

[89] 5 U.S.C. 603.

Securities Act [90] and Sections 12, 13, 15(d) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect certain small entities that are required to file quarterly and annual periodic reports and transition reports under the Exchange Act. For purposes of the Regulatory Flexibility Act, Exchange Act Rule 0–10(a) [91] defines the term ''small business'' to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, has total assets of $5 million or less. The Securities Act defines a ''small business'' issuer, other than investment companies, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less and is engaged in or proposes to engage in an offering of securities of $5 million or less.[92]

We estimate that there are approximately 2,500 companies subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act that have assets of $5 million or less. The proposal to shorten the deadlines for annual and quarterly periodic and transition reports and the proposal regarding website access to Exchange Act reports would apply to these small entities if they have a public float of $75 million or more, have been subject to the Exchange Act's reporting requirements for at least one year, and have filed at least one annual report. We have no way to determine exactly how many small entities meet these requirements, although it is unlikely that many of these entities would meet the public float requirement.

According to the Standard & Poors Research Insight Compustat Database, of the 711 reporting companies listed with assets of $5 million or less, 10, or 1.4%, had a market capitalization greater than $75 million.[93] Assuming that this sample is representative of all small entities, the public float requirement would have the effect of almost completely excluding all small entities. We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

[90] 15 U.S.C. 77c(b) and 77s(a).

[91] 17 CFR 240.0–10(a).

[92] 17 CFR 230.157.

[93] It is our understanding that the data in the Compustat Database is derived principally from larger companies, so our estimate could understate the actual percentage of companies that would be affected by the proposals.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For reporting companies that meet our proposed public float and reporting history requirements, we are proposing to shorten the due dates of annual reports on Form 10–K from 90 days to 60 days after a reporting company's fiscal year end and the due dates of quarterly reports on Form 10–Q from 45 days to 30 days after the first three quarters of a company's fiscal year. We propose similar changes to transition reports these companies must file when they change their fiscal year. We do not propose to change the filing deadlines for other companies, including small business issuers eligible to rely on our small business reporting system, at this time.

While the amount of information required to be included in Exchange Act reports, and hence the amount of time necessary to prepare them, would remain the same, affected companies may be required to use additional resources, including in-house personnel, in preparing their reports on a shorter timeframe. Small entities that meet the public float and reporting history requirements may incur additional costs in seeking the help of outside experts, particularly outside legal counsel and auditors. We request comment on the ability of affected small entities to meet shortened filing deadlines. If they would incur additional costs, what are the particular types and amounts of costs that may be required, and would small entities be able to bear these costs? Would the proposal disproportionately impact small entities?

Companies that were late in filing their reports would lose eligibility for short-form registration for at least one year, and Securities Act Rule 144 and Form S–8 would be temporarily unavailable during the period of noncompliance. [94] On the margin, affected small entities that are unable, or cannot afford, to prepare their reports on a shorter timeframe may be discouraged from remaining public companies or accessing the public markets. This may adversely affect their ability to raise capital. We request comment on the likelihood of this possibility.

We also propose to require accelerated filers to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. If a company does not provide such access, it must also disclose why it does not do so and where else investors can access these filings electronically immediately upon filing. In formulating our proposal, we have sought to minimize its costs, particularly on small entities. The proposal would apply only to companies that met our proposed public float and reporting history requirements. Companies would not be required to establish an Internet website for purposes of this requirement if they did not otherwise have one. Also, a company could elect not to provide website access to their reports as long as they disclosed that they have elected not to do so, the reasons why they have elected not to do so (which could include cost) and where else the public can access the company's reports. We request comment on whether there are additional alternatives to further our goal that we have not mentioned.

We seek comment on these views. How difficult would it be for affected small entities to comply with the website proposal? Would our proposal disproportionately impact small entities?

[94] One-time extensions of due dates are available under certain circumstances under Exchange Act Rule 12b–25.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with our proposals, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Our proposals to shorten the filing deadlines would apply only to entities that meet minimum public float and reporting history requirements, which should serve to exclude almost all small

entities. As a result, different timetables would apply for most small entities. We strive to strike a balance between timely delivery of information to investors and giving companies enough time to prepare their reports. We have been considering the alternative of only shortening the filing deadlines for companies whose securities are listed on the NYSE or AMEX or quoted on Nasdaq National Market System or Small Cap Market. However, we believe investors in companies that are not as large or listed but nevertheless meet the public float or reporting history requirements may want and benefit from more timely disclosures just as much as investors in larger, listed companies. Accordingly, we are not proposing to exempt small entities in their entirety from the coverage of these proposals, but we will consider comments on this point.

In addition, we are not aware of how to further clarify, consolidate or simplify these proposals for small entities. In this regard, we are proposing already to limit the shortened deadlines to entities that meet minimum public float and reporting history requirements. We do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Because specified information in Exchange Act reports must be reported in a timely manner to be useful, design standards are necessary to achieve the objectives of the proposal. We request comment, however, on these matters.

Our proposals regarding disclosure of website access to company reports are designed to enhance the accessibility and dissemination of information to investors. These proposals also would apply only to entities that met minimum public float and reporting history requirements, which should serve to exclude almost all small entities. We believe our proposals strike a balance between providing investor access to information and giving companies alternatives in providing this access. Different compliance or reporting requirements for affected small entities or exemptions for all affected small entities are not considered warranted at this time because it is just as important that information be adequately disseminated and easily available for affected small entities as it is for large entities, if not more so. The expected low costs of complying with the proposal, as well as the effect of the proposed public float requirement in lessening the impact on small entities, also contributed to our proposal not to exclude small entities in their entirety.

Companies could choose whether to provide website access and therefore the disclosure that would be necessary in their annual report on Form 10–K. This allows companies, including small entities, the flexibility to choose the alternative that bests suits their individual circumstances. We believe this freedom should apply to all entities, large and small. We are not aware of ways to further clarify, consolidate or simplify these proposals for small entities. We request comment, however, on these matters.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comment on the number of small entities that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of, the proposed amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views if possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

VII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 15(d) and 23(a) of the Exchange Act.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

2. Section 229.101 is amended by revising paragraph (e) to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the information in paragraphs (e)(1) and (e)(2) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraphs (e)(2) and (e)(3) of this section if you are an accelerated filer (as defined in § 240.12b–2 of this chapter) filing an annual report on Form 10–K (§ 249.310 of this chapter).

(1) Whether you file reports with the Securities and Exchange Commission. If you are reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available, except that if you are an accelerated filer filing an annual report on Form 10–K, you must disclose your Internet address, if you have one.

(3)(i)Whether you make available free of charge on your Internet website, if you have one, your annual report on Form 10–K, quarterly reports on Form 10–Q (§ 249.308a of this chapter), current reports on Form 8–K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after, and in any event on the same day as, you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons why you do not do so (including, where applicable, that you do not have an Internet website);

(iii) If you do not make your filings available in this manner, one or more locations where the public can access

these filings electronically immediately upon filing, if any, and whether there is a fee for such access; and

(iv) Whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.12b–2 is amended by adding the definition of ''Accelerated filer'' before the definition of ''Affiliate'' to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Accelerated filer. (1)The term ''accelerated filer'' means an issuer filing a report pursuant to Sections 12, 13 or 15(d) of the Act (15 U.S.C. 78*l*, 78m or 78o(d)) after it first meets the following conditions:

(i) The aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer is $75 million or more;

(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Act for a period of at least twelve calendar months preceding the filing of the report; and

(iii) The issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Act.

Note to paragraph (1): The aggregate market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity, as of a date no more than 60 and no less than 30 days before the last day of the issuer's most recently completed fiscal year.

(2) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer becomes eligible to use Forms 10–KSB and 10–QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports. In that case, the issuer will not become an accelerated filer again unless it subsequently:

(i) Becomes ineligible to use Forms 10–KSB and 10–QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports; and

(ii) Meets the conditions in paragraph (1) of this definition.

* * * * *

5. Section 240.13a–10 is amended by:

a. Removing the phrase ''90 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (b) and the second sentence of paragraph (f);

b. Removing the phrase ''45 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (c), the second sentence of paragraph (e)(2), and the third sentence of paragraph (f); and

c. Adding paragraph (j) before the **Note** to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(j)(1)For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be 60 days for accelerated filers (as defined in § 240.12b–2) filing on Form 10–K (§ 249.310 of this chapter) and 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be 30 days for accelerated filers filing on Form 10–Q and 45 days for all other issuers.

* * * * *

6. Section 240.15d–10 is amended by:

a. Removing the phrase ''90 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (b) and the second sentence of paragraph (f);

b. Removing the phrase ''45 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (c), the second sentence of paragraph (e)(2), and the third sentence of paragraph (f); and

c. Adding paragraph (j) before the **Note** to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be 60 days for accelerated filers (as defined in § 240.12b–2) filing on Form 10–K (§ 249.310 of this chapter) and 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be 30 days for accelerated filers filing on Form 10–Q and 45 days for all other issuers.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

8. Section 249.308a is revised to read as follows:

§ 249.308a Form 10–Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), required to be filed pursuant to § 240.13a–13 or § 240.15d–13 of this chapter. A quarterly report on this form pursuant to § 240.13a–13 or § 240.15d–13 of this chapter shall be filed within the following period after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year:

(1) 30 days after the end of the fiscal quarter for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(2) 45 days after the end of the fiscal quarter for all other registrants.

(b) Form 10–Q also shall be used for transition and quarterly reports filed pursuant to § 240.13a–10 or § 240.15d–10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

9. Form 10–Q (referenced in § 249.308a) is amended by revising General Instruction A.1. to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10–Q

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10–Q.

1. Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a–13 (§ 240.13a–13 of this chapter) or Rule 15d–13 (§ 240.15d–13 of this chapter). A quarterly report on this form pursuant to Rule 13a–13 or Rule 15d–13 shall be filed within the following period after the end of

each of the first three fiscal quarters of each fiscal year, but no report need be filed for the fourth quarter of any fiscal year:

a. 30 days after the end of the fiscal quarter for accelerated filers (as defined in § 240.12b–2 of this chapter); or

b. 45 days after the end of the fiscal quarter for all other issuers.

* * * * *

10. Section 249.310 is revised to read as follows:

§ 249.310 Form 10–K, for annual and transition reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) This form shall be used for annual reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) for which no other form is prescribed. This form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

(b) Annual reports on this form shall be filed within the following period:

(1) 60 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(2) 90 days after the end of the fiscal year covered by the report for all other registrants.

(c) Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

(d) Notwithstanding paragraphs (b) and (c) of this section, all schedules required by Article 12 of Regulation S–X (§§ 210.12–01—210.12–29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than the following periods:

(1) In the case of an annual report, not later than:

(i) 90 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(ii) 120 days after the end of the fiscal year covered by the report for all other registrants; and

(2) In the case of a transition report, not later than 30 days after the due date of the report.

11. Form 10–K (referenced in § 249.310) is amended by revising General Instruction A. and the paragraph before the ''Note'' on the cover page to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10–K.

(1) This Form shall be used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) (the ''Act'') for which no other form is prescribed. This Form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Act.

(2) Annual reports on this Form shall be filed within the following period:

(a) 60 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(b) 90 days after the end of the fiscal year covered by the report for all other registrants.

(3) Transition reports on this Form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

(4) Notwithstanding paragraphs (2) and (3) of this General Instruction A., all schedules required by Article 12 of Regulation S–X (§§ 210.12–01—210.12–29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than the following periods:

(a) In the case of an annual report, not later than:

(i) 90 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(ii) 120 days after the end of the fiscal year covered by the report for all other registrants; and

(b) In the case of a transition report, not later than 30 days after the due date of the report.

* * * * *

FORM 10–K

* * * * *

If the registrant is an accelerated filer, state the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of a specified date no more than 60 and no less than 30 days before the end of the registrant's most recently completed fiscal year. If the registrant is not an accelerated filer (as defined in Rule 12b–2 of the Act), state the aggregate market value of the voting and non-voting common equity held by non-affiliates used to determine whether the registrant was an accelerated filer and specify the date used for purposes of this computation.

Note. * * *

* * * * *

By the Commission.

Dated: April 12, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9454 Filed 4–22–02; 8:45 am]

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Federal Register

Tuesday,
April 23, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 230, 239 and 249
Form 8–K Disclosure of Certain Management Transactions; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239 and 249

[Release No. 33–8090; 34–45742; File No. S7–09–02]

RIN 3235–AI43

Form 8–K Disclosure of Certain Management Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments that would require some public companies to file current reports describing: directors' and executive officers' transactions in company equity securities, directors' and executive officers' arrangements for the purchase and sale of company equity securities, and loans of money to a director or executive officer made or guaranteed by the company or an affiliate of the company. The purpose of the proposed amendments is to provide investors with prompt disclosure of this information, so that investors will be able to make investment and voting decisions on a better-informed and more timely basis.

DATES: Comments should be received on or before June 24, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–09–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Special Counsel, at (202) 942–2900, or Mark A. Borges, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Form 8–K [2] under the Securities Exchange Act of 1934 (''Exchange Act''),[3] and related amendments to Rule 144 [4] and Forms S–2,[5] S–3,[6] and S–8 [7] under the Securities Act of 1933 (''Securities Act'').[8]

I. Executive Summary

In order to keep current the information required to be included in the registration statement under Section 12 of the Exchange Act,[9] Exchange Act Section 13(a) [10] requires every issuer of a security registered under Section 12 to file such information as the Commission may prescribe by rule ''as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.'' For these purposes, our rules require annual reports on Forms 10–K and 10–KSB,[11] quarterly reports on Forms 10–Q and 10–QSB,[12] and current reports on Form 8–K.[13] Similar disclosure must be provided in the proxy statement for the annual meeting at which directors are elected required by the rules under Exchange Act 14(a) [14] because it is material to shareholders' voting decisions. We also require reporting companies to file these reports and proxy statements in electronic format.[15]

We propose to amend Form 8–K under the Exchange Act to require companies with a class of equity securities registered under Exchange Act Section 12 to report information about:

- Directors' and executive officers' transactions in company equity securities (including derivative securities transactions and transactions with the company);
- Directors' and executive officers' arrangements for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1(c); [16] and
- Loans of money to directors and executive officers made or guaranteed by the company or an affiliate of the company.

Reports of transactions and loans with an aggregate value of $100,000 or more would be due within two business days.

Reports of transactions and loans with a smaller aggregate value, grants and awards pursuant to employee benefit plans, and Rule 10b5–1 arrangements generally would be due by the close of business on the second business day of the following week. However, reports of transactions and loans with an aggregate value less than $10,000 would be deferrable until the aggregate cumulative value of those unreported events for the same director or executive officer exceeds $10,000.

II. Background

A company's registration statement on Form 10 or Form 10–SB [17] to register a class of equity securities under Section 12 of the Exchange Act must identify management and include information about management's business experience, executive compensation, management's security ownership, and management's transactions with and indebtedness to the company.[18] This required disclosure provides investors with information about:

- Executive compensation paid in the form of securities;
- The extent to which management's economic interests are aligned with those of shareholders through ownership of company equity securities; and
- Management's transactions with and relationships to the company

[2] 17 CFR 249.308.

[3] 15 U.S.C. 78a *et seq*.

[4] 17 CFR 230.144.

[5] 17 CFR 239.12.

[6] 17 CFR 239.13.

[7] 17 CFR 239.16b.

[8] 15 U.S.C. 77a *et seq*.

[9] 15 U.S.C. 78*l*.

[10] 15 U.S.C. 78m(a).

[11] 17 CFR 249.310 and 17 CFR 249.310b, respectively. Generally, Exchange Act Rules 13a–1 [17 CFR 240.13a–1] and 15d–1 [17 CFR 240.15d–1] require issuers with securities registered under Section 12 of the Exchange Act and issuers subject to the reporting requirements of Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)] to file such annual reports.

[12] 17 CFR 249.308a and 17 CFR 249.308b, respectively. Generally, Exchange Act Rules 13a–13 [17 CFR 240.13a–13] and 15d–13 [17 CFR 240.15d–13] requires issuers with securities registered under Section 12 of the Exchange Act and issuers subject to the reporting requirements of Section 15(d) of the Exchange Act to file such quarterly reports.

[13] Generally, Exchange Act Rule 13a–11 [17 CFR 240.13a–11] requires issuers with securities registered under Section 12 of the Exchange Act to file a current report on Form 8–K within the period specified by the form, unless the issuer previously reported substantially the same information. Exchange Act Rule 15d–11 [17 CFR 240.15d–11] generally applies the same requirement to issuers subject to the reporting requirements of Section 15(d) of the Exchange Act.

[14] 15 U.S.C. 78n(a), which authorizes Regulation 14A [17 CFR 240.14a–1 *et seq*].

[15] Rule 101(a)(1)(iii) of Regulation S–T [17 CFR 232.101(a)(1)(iii)].

[16] 17 CFR 240.10b5–1(c).

[17] 17 CFR 249.210 and 17 CFR 249.210b, respectively. Form 8–A [17 CFR 249.208a] is available for the same purpose for an issuer that is already subject to a reporting requirement under Section 13 or Section 15(d) of the Exchange Act. Form 8–A is an abbreviated form that does not require these issuers to repeat information they previously filed.

[18] Items 401, 402, 403, and 404 of Regulations S–K [17 CFR 229.401, 402, 403, and 404] and S–B [17 CFR 228.401, 402, 403, and 404]. Respectively, they comprise Items 5, 6, 4, and 7 of Form 10 and Form 10–SB.

beyond the scope of employment that could affect management's performance of its duties.

Changes in securities ownership and some management transactions that are disclosed also can provide information regarding management's view of the company's performance and prospects.

Under current regulations, the information must be updated annually in the company's annual report on Form 10–K or Form 10–KSB.[19] The information may be incorporated by reference from the company's definitive proxy statement for the annual meeting at which directors are elected, where similar disclosure also is required because it is material to shareholders' voting decisions.[20] We do not propose to revise those disclosure requirements in this rulemaking.

However, advances in technology and the increased dependence on the ready availability of current corporate information have reshaped the way our markets operate. Technological developments that significantly reduce timeframes for the capture and analysis of information necessitate a new consideration of the timing of mandated disclosure to the markets. We believe it would enable investors to make investment and voting decisions on a more timely and better informed basis, provide more timely information regarding management's view of company performance or prospects, protect investors, and promote fair dealing in company equity securities if companies were required to report additional information related to these subjects on a more current basis. To this end, we propose to amend Form 8–K.

Some of the information that a company would report with respect to directors' and executive officers' transactions in company equity securities also is reportable by officers and directors under Section 16(a) of the Exchange Act.[21] However, Section 16(a) requires disclosure that may be filed too slowly for the public to obtain the maximum benefit from the information,[22] and the reports are not always readily accessible because they are not required to be filed electronically.[23] As described below, the proposal would require the company to report electronically significant information concerning transactions that may reveal directors' and executive officers' views as to company prospects.[24] We believe that these proposed reports would protect investors and promote fair dealing in the company's securities by enabling investors to make informed decisions on a more timely basis. As proposed, the categories of transactions to be reported currently on Form 8–K would not replicate all the transactions that officers and directors must report under Section 16(a), but only those most related to the purpose of the newly proposed current disclosure.

Moreover, the Section 16(a) filings do not report two categories of information—directors' and executive officers' arrangements under Exchange Act Rule 10b5–1 and their receipt of loans from, or guaranteed by, the company or an affiliate of the company—that we believe also are of significant informational value and should be reported on a current basis.[25] Because this information, like information concerning directors' and executive officers' transactions, relates to both the market for company equity securities and directors' and executive officers' relationship to the company, we propose to require companies to report this information on Form 8–K.

III. Proposed Changes

A. Addition of New Form 8–K Item

We propose to amend the current report on Form 8–K to add Item 10, which would require companies with a class of equity securities registered under Section 12 to report on Form 8–K:

- Each director's and executive officer's transactions in company equity securities (whether or not of the class registered under Section 12), including the acquisition and disposition of derivative securities, and the exercise, termination or settlement of derivative securities;
- Each director's and executive officer's adoption, modification or termination of a contract, instruction or written plan for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1(c);[26] and
- Each loan of money to a director or executive officer made or guaranteed by the company or an affiliate of the company.

Current reports of information regarding changes in directors' and executive officers' holdings of company equity securities might in some cases reveal shifts in the alignment between management's and shareholders' economic interests. Such reports, particularly with respect to derivative securities used by directors and executive officers for hedging purposes, also could disclose in some cases transactions by directors and executive officers that might be construed as severing the link between executive compensation and company equity securities performance.

Moreover, current reports of information regarding directors' and executive officers' transactions in company equity securities would provide public investors timely disclosure of potentially useful information as to management's views of the performance or prospects of the company. Many public investors take

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[19] Items 10, 11, 12, and 13 of Form 10–K and Items 9, 10, 11, and 12 of Form 10–KSB.

[20] Items 6, 7, and 8 of Schedule 14A [17 CFR 240.14a-101]. The proxy statement also includes additional executive compensation disclosure that addresses the relationship between executive compensation and a company's equity securities performance. This information is not deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent specifically incorporated by reference.

[21] 15 U.S.C. 78p(a).

[22] Section 16(a) establishes that reports on Form 4 [17 CFR 249.104] are due within 10 days after the close of the month in which the reportable transaction occurs, creating a delay of 10 to 40 days. Reports on Form 5 [17 CFR 249.105], which applies to most transactions between an officer or director and the company, are due within 45 days after the company's fiscal year end, creating a delay of up to 410 days between a reportable transaction and filing. Exchange Act Rule 16a-3(f)(1) [17 CFR 240.16a-3(f)(1)].

[23] The Commission has permitted voluntary EDGAR filing of these reports since 1995. Securities Act Release No. 7231 (Oct. 5, 1995) [60 FR 53474]. In Securities Act Release No. 7803 (Feb. 25, 2000) [65 FR 11507], the Commission stated that it intends to engage in future rulemaking to make the filing of Section 16(a) forms on EDGAR mandatory.

[24] The relationship between management's transactions and company equity securities performance has been the subject of significant study. See J. Lakonishok and I. Lee, ''Are Insiders' Trades Informative?,'' Review of Financial Studies, Vol. 14, Issue 1 (Spring 2001).

[25] Item 404 of Regulations S–K and S–B requires disclosure of any director or executive officer's indebtedness to the company or its subsidiaries at any time since the beginning of the company's last fiscal year in an amount in excess of $60,000. This disclosure, which is filed annually on Form 10–K or Form 10–KSB and the proxy statement for the annual meeting at which directors are elected, does not address issues involving use of company equity securities as collateral.

[26] For purposes of insider trading liability under Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Exchange Act Rule 10b–5 [17 CFR 240.10b–5], Rule 10b5–1 provides that ''a purchase or sale of a security of an issuer is 'on the basis of' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.'' Compliance with the affirmative defense conditions of Rule 10b5–1(c) allows a person to plan securities transactions in advance while not aware of material nonpublic information, and later execute the transactions as planned without Section 10(b) and Rule 10b-5 liability, even if aware of material nonpublic information at the time a planned transaction occurs.

the position that timely disclosure of these transactions is necessary for them to make informed investment decisions.[27]

Similarly, current reports disclosing that a director or executive officer has entered into, modified or terminated a Rule 10b5–1 contract, instruction or written plan for the purchase or sale of company equity securities may provide investors with more extensive disclosure of potentially useful information as to management's views of the performance and prospects of the company. Finally, current reports of company (or company affiliate) loans and guarantees of third-party loans to directors and executive officers would inform investors of financial arrangements not generally available to shareholders that may result in the receipt of *de facto* additional compensation by the director or executive officer.

1. Covered Directors and Executive Officers

A company would be required to report under Item 10 with respect to all directors and executive officers. For purposes of the proposal, ''executive officer'' would be defined by Exchange Act Rule 3b–7.[28] This is the same definition that applies for purposes of management disclosure in Forms 10, 10–SB, 10–K, 10–KSB, and Schedule 14A.

For purposes of Section 16, our rules define ''officer'' similarly.[29] However, Section 16 ''officers'' also specifically include principal financial officers and principal accounting officers (or controllers where there is no principal accounting officer), and officers of the company's parent(s) or subsidiaries if they perform significant policy-making functions for the issuer.

Unlike other company disclosure obligations and insiders' Section 16(a) reporting obligations, the proposed Item 10 reports would apply only with respect to directors and executive officers, and not to principal security holders. In contrast, a company must report share ownership by persons who beneficially own more than five percent of any class of the registrant's voting securities[30] in the registration statement on Form 10 or Form 10–SB,[31] update it annually in the annual report on Form 10–K or Form 10–KSB,[32] and include it in the definitive proxy statement for the annual meeting at which directors are elected.[33] Beneficial owners of more than ten percent of a class of equity securities registered under Section 12 [34] are subject to Section 16 of the Exchange Act.

However, these beneficial owners may not be subject to the same fiduciary duties to the company as directors and executive officers, and do not receive compensation from the company. Further, the company's relationship to these beneficial owners, which in some cases may even be hostile, does not necessarily facilitate current reporting by the company. Accordingly, the proposal would not require a company to report transactions in company equity securities (or other Item 10 events) by major shareholders who are not also directors or executive officers.

Questions regarding what persons' Item 10 events should be reported:

- Is the Rule 3b–7 definition the appropriate definition of ''executive officer'' for purposes of the proposal?

—In practice, do companies generally identify principal financial officers, principal accounting officers, and controllers as Rule 3b–7 ''executive officers'?

—If not, should companies also be required specifically to report with respect to these officers under Item 10?

—Should Item 10 reporting apply with respect to directors who are not also executive officers?

—Are investors as interested in transactions by these directors? What about their Rule 10b5–1 arrangements and loans made to them (or guaranteed by) the company or its affiliates?

—Does reporting with respect to these directors provide additional concerns for issuers?

—Does Section 16 reporting by these directors provide sufficiently timely information for issuers?

- Do investors need to know about more than ten percent beneficial owners' transactions earlier than those transactions are reportable under Section 16(a)?

—Would companies reasonably be able to implement procedures and systems to report with respect to more than ten percent beneficial owners under Item 10?

—What would be the impact on more than ten percent beneficial owners of extending the Item 10 requirement with respect to them?

- Are there any other persons whose transactions and other events should be expressly included in (or excluded from) the proposal?

2. Reporting Deadlines

As proposed, most Item 10 events would be reportable early in the week following the event. However, events that would be of heightened significance to investors would be reportable on an accelerated basis, and *de minimis* events would be reportable on a deferred basis. Specifically:

- An Item 10 Form 8-K would be due within two business days following a transaction or loan with an aggregate value of $100,000 or more with respect to a director or executive officer, other than a grant or award pursuant to an employee benefit plan.
- Employee benefit plan grants and awards, transactions and loans with an aggregate value less than $100,000, and Rule 10b5–1 arrangements generally would be reportable not later than the close of business on the second business day of the week following the week in which the event occurred.
- The report of a transaction or loan with an aggregate value not exceeding $10,000 could be deferred until the aggregate cumulative value of unreported transactions and loans with respect to the same director or executive officer exceeds $10,000.

The date of a reportable event would be the date on which the parties enter into an agreement. For example, in the case of a sale of securities to the company or a loan from the company, the date would be the date of the agreement and not the date of completion of the sale or making of the loan. In the case of a line of credit or similar lending arrangement, both the date of entering into the arrangement and the date of a loan under that arrangement would be reportable. In the case of an open market securities transaction, the date would be the trade date and not the settlement date. In the case of a Rule 10b5–1 arrangement, the date would be the date on which the

[27] See, *e.g.,* J. Moreland, ''Two Modest Proposals for Fixing Insider Trading Rules,'' TheStreet.Com (Feb. 11, 2002); T. Mulligan, ''Calls for Faster, Fuller Disclosure by Insiders,'' Los Angeles Times (Mar. 3, 2002); A. Sloan, ''One Enron Lesson: Some Insider Trading Falls Outside the Timely-Reporting Rule,'' Washington Post (Mar. 5, 2002); and A. Beard, ''Insiders'' Trades Spark Outsiders' Interest,'' Financial Times (Apr. 8, 2002).

[28] 17 CFR 240.3b–7.

[29] Exchange Rule 16a–1(f) [17 CFR 240.16a–1(f)]. Further, a note to Rule 16a–1(f) establishes a presumption that a person whom the company identifies as an ''executive officer'' pursuant to Item 401(b) of Regulation S–K is an ''officer'' for purposes of Section 16.

[30] Beneficial owners of more than five percent of a class of equity securities registered under Section 12 are subject to the reporting requirements of Section 13(d) of the Exchange Act [15 U.S.C. 78m(d)].

[31] Item 403 of Regulations S–K and S–B, and Item 4 of Forms 10 and 10–SB.

[32] Item 12 of Form 10–K and Item 11 of Form 10–KSB.

[33] Item 6 of Schedule 14A.

[34] As defined in Exchange Act Rule 16a–1(a)(1) [17 CFR 240.16a–1(a)(1)].

arrangement is made, modified or terminated.

The proposed deadlines are designed to balance the significance to investors of the reportable information and the company's reporting burden. The two business day accelerated deadline is intended to provide investors with rapid disclosure of the most significant events, while allowing the company sufficient time to compile the required information. The next week deadline is intended to provide investors with timely disclosure, while facilitating the company's ability to report on a single Form 8–K multiple events in the same time frame with respect to more than one director or executive officer. The deferred deadline would allow the company to defer reporting events that, by virtue of relatively low aggregate value, would presumably be less significant to investors. All transactions reportable on the same day could be filed on a single Form 8–K under Item 10.

The $100,000 and $10,000 thresholds would apply to the aggregate value of the reportable transaction or loan. These dollar thresholds are intended to tailor the reporting requirements based upon the size of the event and the presumed significance of the information to investors. The thresholds would apply to employee benefit plan transactions other than grants and awards, such as option exercises, volitional intra-plan transfers involving a company equity securities fund, and deferral of cash compensation in phantom stock units. For physically-settled derivative securities, the aggregate value would be computed by reference to the market value of the underlying securities on the date of the transaction. For cash-settled derivative securities, the aggregate value would be computed based on the transaction's notional value.[35] Where exercise or tax withholding rights or other net settlement procedures are used in the exercise, conversion or other settlement of a derivative security, the aggregate value would be computed on a gross basis.

As a practical matter, a company would need to institute procedures and systems to assure Item 10 compliance. The general instruction would include a Commission finding that it is not in the public interest to impose any sanction on a company, notwithstanding a violation, that demonstrates that:

(1) At the time of the violation, it had designed procedures and a system for applying such procedures sufficient to provide reasonable assurances that Item 10 events are timely reported;

(2) At the time of the violation, the company followed those procedures; and

(3) As promptly as reasonably practicable, the company made a filing to correct any violation.[36]

This provision is intended to provide protection against sanctions for companies that experience isolated failures to comply notwithstanding appropriate procedures. Repeated or systemic violations or those that otherwise are not isolated would suggest deficiencies in procedures or their application that would be inconsistent with availability of the provision. In addition, where the company makes the demonstration described above, the Commission nevertheless could proceed against a director or executive officer. As with other Section 13(a) violations, a private right of action would not arise.

Questions regarding implementation and costs:

- Will companies subject to Item 10 be able to implement reasonable procedures to prepare and file Item 10 Forms 8–K under these proposed deadlines?
- To what extent will companies be able to make use of existing procedures to compile and report directors' and executive officers' transaction information?
- What additional costs will companies incur to compile information and convert it into electronic format for filing?

Questions regarding appropriateness of proposed reporting deadlines and dollar thresholds:

- Do the proposed deadlines and thresholds appropriately balance investors' informational needs and the company's reporting burden?
- Is $100,000 with respect to transactions by or loans to a single director or executive officer an appropriate threshold for requiring reporting within two business days?

—Would either a higher or lower dollar threshold, such as $60,000[37] or $150,000, better quantify events of sufficient significance to investors to warrant accelerated reporting?

—Should the proposed two business days deadline be either shorter or longer (such as one or three business days)?

- Are there criteria other than aggregate dollar value that should determine what events should be reported within the accelerated deadline?

—For example, should the accelerated deadline always apply regardless of dollar value if the reportable event is a transaction with the company or a loan from (or guaranteed by) the company?

—Should foreclosure on or forgiveness of a loan from (or guaranteed by) the company always be reportable within two business days?

- Should aggregate dollar value determine the reporting deadline for additional events?

—Should the deadline for reporting a Rule 10b5–1 arrangement be determined based on the aggregate proposed transaction price or aggregate market value of the securities subject to purchase or sale under the arrangement, in the same manner as proposed for transactions and loans?

—Similarly, should the deadline for reporting grants and awards under employee benefit plans be based on the aggregate value of the grant or award?

- Should the close of business on the second business day of the week following the event be the deadline for more (or all) Item 10 reports?

—Are there employee benefit plan transactions other than grants and awards for which this deadline would be appropriate?

—Should this deadline be shorter or longer, such as the first or third '' rather than the second '' business day of the week following the event?

—Are there any events for which a longer period, such as five business days after the event, would be an appropriate reporting deadline?

- Is $10,000 an appropriate threshold for permitting deferred reporting of smaller events?[38]

—Would a different amount, such as $20,000 or $30,000, better quantify *de minimis* events which might not be of significant interest to investors?

—Should this dollar threshold vary depending on whether the reportable event is a transaction with or a loan from (or guaranteed by) the company?

—Should there be a maximum aggregation period for smaller events beyond which reporting could no longer be deferred? If so, what would be an appropriate period?

[35] Notional value generally refers to the gross value of the securities or other assets from which the cash-settlement value is calculated.

[36] Proposed amendment to General Instruction B.1 to Form 8–K.

[37] Item 404(a) of Regulations S–K and S–B generally requires disclosure of a company's transactions with management in which the amount involved exceeds $60,000.

[38] The proposed $10,000 threshold is similar to the $10,000 threshold for deferred reporting of small acquisitions under Exchange Act Rule 16a–6 [17 CFR 240.16a–6]. However, the proposed Item 10 deferred reporting threshold would not be limited to acquisitions.

—Instead should reports of all transactions less than $100,000 be deferred until their aggregate cumulative value equals $100,000?
—Are there any categories of events that should be ineligible for deferred reporting?

As a general matter, would the clarity provided by establishing reporting deadlines based on aggregate value outweigh the administrative burden of tracking aggregate value?

Questions regarding application of dollar thresholds to specific transactions:

• To prevent evasion, should transactions or loans that occur within the same two business day period be considered together for purposes of computing the dollar threshold for reporting under the earlier deadline?
—Should there be a longer (or shorter) aggregation period?

• Where the exercise of an option is followed by a disposition of the underlying securities, should the aggregate value be computed by reference solely to the disposition, rather than by adding the fair market value of the acquired securities to the dollar amount of the disposition?

Questions regarding proposed Commission finding:

• Does the proposed finding appropriately address company liability for violations?

• Should companies be required to disclose, for example in the annual report on Form 10-K, any director's or executive officer's failure to comply with procedures that the company has implemented to provide reasonable assurances that Item 10 events are timely reported?

3. Covered Companies

As proposed, only issuers with a class of equity securities registered under Section 12 would be subject to Item 10. These companies comprise a significant portion of U.S. equity markets. Moreover, these would be the same companies whose officers, directors, and more than ten percent beneficial owners are required to report transactions in company equity securities pursuant to Section 16(a). Many of these companies help their officers and directors fulfill their Section 16(a) reporting obligations, and accordingly already may have procedures in place that would assist them in providing Item 10 disclosure.[39] Such procedures, including in some cases requirements that directors and executive officers give advance notice or receive advance approval of transactions, would help companies keep track of transactions that would be reportable under Item 10.

Questions regarding covered companies:

• Should companies required to report with respect to a class of equity securities solely under Section 15(d) also be subject to Item 10 reporting?
—Is Item 10 information necessary for timely, well-informed investment decisions with respect to equity securities of these issuers?

• Alternatively, should small business issuers[40] with a class of equity security registered under Section 12 be exempted from Item 10 because compliance would impose excessive burdens?

4. Filed Status of Reports

As proposed, Item 10 Forms 8–K would be considered ''filed'' for purposes of liability under Section 18 of the Exchange Act.[41] Consequently, Item 10 information would be incorporated by reference in Securities Act registration statements on Forms S–2, S–3, S–8, and S–4 (where Form S–2 or S–3 level disclosure is used).[42] However, we are proposing amendments to the applicable registration statement form instructions and Securities Act Rule 144 so that an Item 10 Form 8–K delinquency would not affect form eligibility or the company's current reporting status under Rule 144(c).[43]

As proposed, Item 10 Forms 8–K would be subject to General Instruction B.3 to Form 8–K. This instruction provides that if substantially the same information required by Form 8–K has been previously reported by the company, an additional report need not be made on Form 8–K.[44]

Questions regarding ''filed'' status of reports:

• Should Item 10 Forms 8–K not be considered ''filed'' (and hence not subject to Section 18 liability) unless the company specifically states that the information is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or Exchange Act?[45]

• Alternatively, if an Item 10 Form 8–K is considered ''filed'' as proposed, should a delinquency adversely affect either the company's eligibility to use short-form Securities Act registration statements or its current reporting status under Rule 144(c)?

• Are there circumstances in which application of the Form 8–K instruction regarding previously reported information would undercut the purpose of Item 10, which is to make the reportable information readily available to the public? Would the relatively short reporting deadlines applicable to Item 10 reports make it less likely for Item 10 information to be previously reported?

B. Application to Transactions

The transactions subject to reporting under paragraph (a) of Item 10 would include transactions in any class of company equity security (whether or not registered under Section 12), including derivative securities with respect to company equity securities (whether or not the derivative securities were issued by the company). The company would report any transaction in which the director or executive officer has a pecuniary interest,[46] including transactions with third parties as well as transactions with the company. As proposed, the company would not need to report trust transactions that would not be reportable by the director or executive officer under Section 16(a).[47]

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[39] For example, these companies are likely to have established procedures to comply with their obligation to disclose Section 16 reporting persons' failure to timely file Section 16(a) reports. This reporting obligation is set forth in Item 405 of Regulations S–K and S–B [17 CFR 229.405 and 17 CFR 228.405, respectively], and is required disclosure in the annual report on Form 10–K or Form 10–KSB and the proxy statement for the annual meeting at which directors are to be elected.

[40] Exchange Act Rule 12b–2 [17 CFR 240.12b–2] defines a ''small business issuer'' as a U.S. or Canadian issuer, other than an investment company, that has revenues of less than $25 million, if the aggregate market value of its outstanding voting and non-voting common equity held by non-affiliates is not $25 million or more. If the issuer is a majority-owned subsidiary, it is not a small business issuer unless the parent corporation also is a small business issuer.

[41] 15 U.S.C. 78r.

[42] 17 CFR 239.25.

[43] Proposed amended General Instruction I.C to Form S–2, General Instruction I.A.3 to Form S–3, General Instruction A.1 to Form S–8, and Securities Act Rule 144(c).

[44] For this purpose, ''previously reported'' is defined in Rule 12b–2 [17 CFR 240.12b–2] to mean previously filed with, or reported in a statement under Section 12 of the Exchange Act, a report under Section 13 or 15(d) of the Exchange Act, a definitive proxy statement or information statement under Section 14 of the Exchange Act, or a registration statement under the Securities Act.

[45] General Instruction B.2 to Form 8–K provides this treatment for current Item 9 Forms 8–K. These forms report information that a company elects to disclose through Form 8–K pursuant to Regulation FD [17 CFR 243.100–243.103].

[46] Instruction 2 to proposed Item 10 applies the Exchange Act Rule 16a–1(a)(2)(i) [17 CFR 240.16a–1(a)(2)(i)] definition of ''pecuniary interest,'' which is ''the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.

[47] Instruction 2 to proposed Item 10 refers to Exchange Act Rule 16a–8(b) [17 CFR 240.16a–8(b)],

Question regarding trust transactions:

• Should a company be required to report Section 16(a) exempt trust transactions unless the director or executive officer is unaware of the transactions because they are made through a blind trust?

1. Reportable and Exempt Transactions

A company would be required to report any transaction by a director or executive officer that is the economic equivalent of a sale. For example, we would expect the company to report as a sale a director or executive officer's pledge of company equity securities pursuant to a loan from a third party where the loan is non-recourse or there is otherwise an expectation on the part of the director or executive officer that the loan will be repaid by foreclosure or other recourse to the securities, even if there is no formal arrangement.

Reportable transactions would be substantially similar, but not identical, to those that the director or executive officer is required to report under Section 16(a).[48] For example, gifts would be reportable transactions. However, as proposed, transactions in the following categories would not be reportable under Item 10 because they do not generally appear to reflect management's views of the company's prospects or sever the link between executive compensation and company equity securities performance:

• Receipt of stock dividends (including stock splits) and pro rata rights;[49]

• Acquisitions pursuant to regular reinvestment of dividends or interest through a broad-based reinvestment plan;[50]

• Acquisitions or dispositions pursuant to domestic relations orders;[51]

• Transactions as executor of an estate or similar fiduciary during the 12 months following appointment;[52]

• Transactions that change the form of beneficial ownership without changing the director's or executive officer's pecuniary interest in the equity securities;[53]

• Routine acquisitions (*e.g.,* through payroll deduction) pursuant to broad-based, tax-conditioned employee benefit plans and related excess benefit plans;[54]

• Transfers by will or the laws of descent and distribution;[55]

• Acquisitions or dispositions pursuant to holding company formations and similar corporate reclassifications and consolidations;[56] and

• Deposits or withdrawals of equity securities from voting trusts.[57]

Questions regarding proposed exempt transactions:

• Should transactions in any of the proposed exempt categories be subject to Item 10 current reporting?

—Have we chosen the proper criteria for selecting exempt categories of transactions?

—For example, because deposit or withdrawal of securities from a voting trust may affect voting control, should the company make current disclosure of these transactions?

• Are there any other categories of transactions that should be excluded from Item 10 current reporting?

—Does a director's or executive officer's decision to dispose of equity securities by gift reflect a view as to the company's prospects?

—Should gifts be exempted where the director or executive officer is the donee rather than the donor?

2. Content and Format of Reports

With respect to an acquisition or disposition of company equity securities, the company would be required to report:

• The name and title of the director or executive officer;

• The date of the transaction;

• The title and number of securities acquired or disposed of;

• The per share acquisition or disposition price, if any;

• The aggregate value of the transaction;

• The nature of the transaction (*e.g.,* open market sale or purchase, sale to or purchase from the registrant, gift); and

• Any other material information regarding the transaction.

As proposed, the information would be reported in any narrative or tabular format that provides a clear, accurate description of the transaction.[58] Given the rapid due date(s) that would apply, we do not propose to require the company to reconcile and report a director's or executive officer's holdings following a transaction. On a voluntary basis, the company could include additional information concerning the transaction.

Questions regarding content and format:

• Should a specified tabular format be required to facilitate comparisons and reference by investors?

• Is it necessary to include holdings information to make the proposed reports useful to investors?

—If so, would its inclusion substantially increase the cost of compliance?

• Would any particular additional information be necessary to make the proposed reports useful to investors?

—For example, should events be coded by type for ease of identification?

• If so, should the same codes used for purposes of Section 16(a) reporting be used where applicable?

—If the transaction is pursuant to a Rule 10b5–1 arrangement, should this be noted?

• If so, should the Rule 10b5–1 arrangement be identified?

which specifies the circumstances where transactions in company securities held by a trust are reportable by an officer, director or more than ten percent beneficial owner who is the trustee, beneficiary, settlor or remainderman of the trust.

[48] The company's Form 8–K report of a transaction would not relieve an officer or director from the obligation to report that transaction under Section 16(a) on Form 4 or Form 5, or to file a notice of proposed sale on Form 144, as applicable. As discussed below, the information regarding the transaction reportable on Form 8–K would not be identical to the information reported on Form 4 or Form 5.

[49] These are the transactions exempted from Section 16(a) reporting by Exchange Act Rule 16a–9 [17 CFR 240.16a–9]. These transactions, along with other transactions described below as exempted by rule from Section 16(a), also are exempted from Section 16(b) short-swing profit recovery by Exchange Act Rule 16a–10 [17 CFR 240.16a–10].

[50] These are the transactions exempted from Section 16(a) reporting by Exchange Act Rule 16a–11 [17 CFR 240.16a–11].

[51] These are the transactions exempted from Section 16(a) reporting by Exchange Act Rule 16a–12 [17 CFR 240.16a–12].

[52] These are the transactions exempted from Section 16(a) reporting by Exchange Act Rule 16a–2(d) [17 CFR 240.16a–2(d)].

[53] These are the transactions exempted from Section 16(a) reporting by Exchange Act Rule 16a–13 [17 CFR 240.16a–13].

[54] These are the transactions exempted from Section 16(b) short-swing profit recovery by Exchange Act Rule 16b–3(c) [17 CFR 240.16b–3(c)]. Exchange Act Rule 16a–3(f)(1)(i)(B) [17 CFR 240.16a–3(f)(1)(i)(B)] exempts these transactions from Section 16(a) reporting. However, Instruction 3 to proposed Item 10 would require reporting of volitional intra-plan transfers involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security, unless the transaction is made in connection with the director's or executive officer's death, disability, retirement or termination of employment, or is required to be made available to plan participants pursuant to the Internal Revenue Code. These transactions, which are ''discretionary transactions,'' as defined in Exchange Act Rule 16b–3(b)(1) [17 CFR 240.16b–3(b)(1)], may reflect a director's or executive officer's views as to the company's prospects.

[55] These transactions are some of the transactions exempted from Section 16(b) short-swing profit recovery by Exchange Act Rule 16b–5 [17 CFR 240.16b–5].

[56] These are the transactions exempted from Section 16(b) short-swing profit recovery by Exchange Act Rule 16b–7 [17 CFR 240.16b–7].

[57] These are the transactions exempted from Section 16(b) short-swing profit recovery by Exchange Act Rule 16b–8 [17 CFR 240.16b–8].

[58] In Section V, below, we have provided sample disclosure, which illustrates a tabular format for paragraph (a) transactions.

- Would identifying transactions in this manner enhance the proposed Form 8-K disclosure of Rule 10b5–1 plans?
- Would this identification enable investors to better analyze the possible ''market signal'' value of the reported transactions?

Questions regarding relationship to Section 16(a) reports:

- Assuming proposed Item 10 is adopted, would it be feasible and desirable to permit officers and directors to satisfy their Section 16(a) reporting obligations by attaching a Form 4 to the company's Item 10 Form 8–K reporting the same transaction?

—Should we adopt a pilot program in which companies could voluntarily enroll to use this procedure?

- Conversely, should the company be able to satisfy its Item 10 Form 8–K reporting obligation by adding Form 8–K header information to an officer's or director's Form 4?
- Should Form 4 include disclosure of when the transaction was reported on Form 8–K?
- Transactions between officers or directors and the company that are exempted from Section 16(b) short-swing profit recovery currently may be reported within 45 days after the company's fiscal year end on Form 5.[59] Should we instead require officers and directors to report some or all of these transactions earlier on Form 4? Are there any other transactions currently reportable on Form 5 that should instead be reported on Form 4?

3. Derivative Securities

For purposes of Item 10, ''derivative securities'' would be defined the same as in Rule 16a–1(c), but without regard to the exclusion for rights with an exercise or conversion privilege at a price that is not fixed.[60] Although Exchange Act Rule 16a–1(c)(6)[61] excludes these instruments from the application of Section 16 because the opportunity to profit from them is not fixed, as described above the purposes of proposed Item 10 disclosure are different and do not involve profit recapture. As proposed, transactions in instruments such as preferred stock convertible into common stock at a floating exercise price[62] and performance-based units[63] would be reportable under Item 10. Reportable derivative securities also would include security-based swap agreements[64] and, when authorized for trading, security futures products.[65]

In addition to the information described above for other equity securities transactions, reports of acquisitions or dispositions of derivative securities would include:

- The per share exercise or conversion price (or other price, such as a notional price, used in the terms of the derivative security);
- The date(s) on which each derivative security becomes exercisable (or subject to termination), and its date of expiration (or final termination);
- The title and number of underlying securities (or cash equivalent) that would be acquired or disposed of upon exercise, conversion, termination or settlement;
- The nature of the transaction (*e.g.,* option grant, sale or purchase of call option, sale or purchase of put option, entering into a swap or futures contract), indicating whether the transaction involves a collar or other hedge, and if so describing all material terms;[66] and
- Any other material information regarding the transaction, including contingencies applicable to exercise.

For purposes of Item 10, entering into a contract that involves a derivative security would be reportable as an acquisition or disposition of a derivative security, in the same manner as under Section 16(a). As proposed, Item 10 would require disclosure of option grants pursuant to employee benefit plans sponsored by the company, the surrender of those options, and the issuance of replacement grants. The disclosure also is intended to capture option repricings.

Reports of exercises, conversions, terminations or settlements of derivative securities would include:

- The date of the exercise, conversion, termination or settlement;
- The per share price used for exercise, conversion, termination or settlement;
- The title and number of underlying securities (or cash equivalent) acquired or disposed of;
- The nature of the transaction (*e.g.,* exercise of option, settlement of swap agreement), indicating whether the transaction involves a collar or other hedge, and if so describing all material terms; and
- Any other material information regarding the transaction.

As proposed, Item 10 would require disclosure of the expiration of a derivative security.

Questions regarding derivative securities reporting:

- Is the proposed definition of ''derivative security'' appropriate for Item 10 purposes?

—If not, what different definition should be used?

- Should instruments such as preferred stock convertible into common stock at a floating exercise price and performance-based units be reportable under Item 10, as proposed?
- Should any other transactions that do not involve derivative securities reportable under Section 16(a), such as tax withholding rights or stock-for-stock exercise withholding rights,[67] also be reportable under Item 10?
- Is information concerning employee benefit plan option grants of sufficient value to investors to warrant Item 10 disclosure?
- Would the proposed categories of information about derivative securities transactions satisfy investors' needs?

—What, if any, additional information should be required?

- For example, should Item 10 require reporting of other material

[59] Rules 16b–3(d) and 16b–3(e) exempt grants, awards and other acquisitions from the issuer, and dispositions to the issuer, respectively. Rule 16a–3(f)(1)(i) allows these and most other transactions exempt from Section 16(b) to be reported on Form 5.

[60] Proposed Instruction 1 to Item 10.

[61] ''Derivative securities'' are defined in Exchange Act Rule 16a–1(c) [17 CFR 240.16a–1(c)] as ''any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security,'' with certain exceptions. Subparagraph (6) of this rule excludes from that definition ''rights with an exercise or conversion privilege at a price that is not fixed.''

[62] See *Morgan Capital, L.L.C.* v. *Medtox Scientific, Inc.,* 258 F.3d 763 (8th Cir. 2001), *cert. denied,* 122 S.Ct. 1065, 151 L.Ed. 2d 969, 70 U.S.L.W. 3374 (Feb. 19, 2002) (No. 01–739).

[63] These instruments are not considered ''derivative securities'' under Exchange Act Rule 16a–1(c) because their exercisability is subject to conditions (other than the passage of time and continued employment) that are not tied to the market price of a company equity security. Staff interpretive letter to Certilman Balin Adler & Hyman (Apr. 20, 1992).

[64] This term, which is used in Sections 16(a) and (b), is defined in Section 206B of the Gramm-Leach-Bliley Act.

[65] Section 16(f) applies the provisions of Section 16 to ownership of and transactions in these products. Section 3(a)(56) of the Exchange Act [15 U.S.C. 78c(a)(56)] defines ''security futures product'' as ''a security future or any put, call, straddle, option, or privilege on any security future.'' Section 3(a)(55)(A) of the Exchange Act [15 U.S.C. 78c(a)(55)(A)] defines a ''security future'' generally as a contract of sale for future delivery of a single security or of a narrow-based security index.

[66] In Exchange Act Release No. 34514 (Aug. 10, 1994) [59 FR 42449], the Commission described the derivative securities analysis for reporting equity swaps and instruments with similar characteristics under Section 16(a). In Exchange Act Release No. 37260 (May 31, 1996) [61 FR 30376], the Commission further addressed this analysis and adopted Code K for reporting these transactions.

[67] Exchange Act Rule 16a–1(c)(3) [17 CFR 240.16a–1(c)(3)] excludes these rights from ''derivative securities.''

modifications to derivative securities?

—Alternatively, are any of the proposed categories not necessary?

• For example, is information concerning expirations of derivative securities of sufficient value to investors to warrant Item 10 disclosure? Does the answer differ depending upon the type of derivative security?

C. Application To Exchange Act Rule 10b5–1 Arrangements

Under paragraph (b) of Item 10, a company would be required to report that a director or executive officer has entered into a contract, instruction or written plan for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1(c). This disclosure, like paragraph (a) disclosure, would apply based on the director's or executive officers' pecuniary interest in the securities subject to the contract, instruction or written plan.[68]

The conditions of Rule 10b5–1(c) do not require the person who purchases or sells to make a specific filing in order to establish availability of the affirmative defense. Proposed Item 10 would not change this; the availability of the Rule 10b5–1(c) defense would not be conditioned on a company's reporting the contract, instruction or written plan on a Form 8–K. The purpose of the Form 8–K would be to disclose potential transactions under the arrangement, rather than to establish the defense.

If a transaction is executed at the time the director or executive officer provides a Rule 10b5–1(c) instruction, such as a broker-dealer's immediate execution of a limit order, the company would report the transaction under paragraph (a), noting the director's or executive officer's use of an instruction intended to satisfy the rule's affirmative defense conditions, and would not need to report the instruction separately under paragraph (b). In other circumstances, the company's report under paragraph (b) of the contract, instruction or written plan would not relieve the company from subsequent obligations to report transactions thereunder pursuant to Item 10 paragraph (a).[69]

When the director or executive officer enters into the contract, instruction or written plan, the company would report:

• The name and title of the director or executive officer;

• The date on which the director or executive officer entered into the contract, instruction or written plan; and

• A description of the contract, instruction or written plan, including its duration, the aggregate number of securities to be purchased or sold, and the name of the counterparty or agent.

A company would be able to use the form to disclose voluntarily additional information about the Rule 10b5–1 arrangement.

When the director or executive officer later terminates or modifies a contract, instruction or written plan, the company would report:

• The date of the termination or modification; and

• A description of the modification, including any modification to the duration, the aggregate number of securities to be purchased or sold, the interval at which securities are to be purchased or sold, the number of securities to be purchased or sold in each interval, the price at which securities are to be purchased or sold, and the identity of the counterparty or agent.

A director's or executive officer's termination or modification of a Rule 10b5–1 arrangement may indicate a change regarding the company's prospects, and thus may be valuable information to investors. Although we have not proposed to require reports that a director or executive officer has entered into a Rule 10b5–1 arrangement to disclose the prices and intervals at which transactions would occur, or the number of securities to be purchased or sold per interval, we believe that modifications to these terms should be reportable. We would require such modifications to be reported in general terms, such as an increase in the applicable limit order price, or a decrease in the number of shares to be sold periodically under the arrangement, without requiring disclosure of the specific price, number of securities, or duration of interval.

Questions regarding disclosure of Rule 10b5–1 arrangements:

• Is disclosure of any additional information about these arrangements necessary for these proposed reports to be useful to investors?

• Would disclosure of any particular terms invite market manipulation?

• Is there a general expectation of privacy with respect to the terms of Rule 10b5–1 arrangements?

—Is there a specific expectation of privacy with respect to the identity of the counterparty or agent?

—Is disclosure of that identity useful where the Rule 10b5–1 plan involves the use of more than one counterparty or agent?

D. Application to Company Loans

Under paragraph (c) of Item 10, a company would be required to report any loan of money to, or lending arrangement with, a director or executive officer by the company or an affiliate of the company. The company also would need to report if it, or its affiliate, entered into a guarantee or similar arrangement in favor of a third party making such a loan to, or lending arrangement with, a director or executive officer.

These financial arrangements involve the use of company assets for arrangements that are not available to shareholders generally. Further, forgiveness of a loan (or the company's payment on its guarantee) effectively results in the company's payment to the director or executive officer of additional compensation.

When the company makes such a loan, or enters into a lending arrangement or a guarantee or similar arrangement, the company would be required to report:

• The name and title of the director or executive officer;

• The date of each such agreement (or guarantee or similar arrangement) or loan thereunder;

• The dollar amount and other material terms of the agreement or loan, and, if applicable, guarantee or similar arrangement, including interest rate, terms of repayment, and any provisions with respect to forgiveness;

• The number and class of any securities pledged as collateral; and

• The material terms of any pledge, including whether it is made with or without recourse.

When forgiveness, foreclosure or the company's payment on its guarantee occurs, the company would be required to report:

• The name and title of the director or executive officer; and

• The date on which the forgiveness, payment or foreclosure occurred, and the dollar amount of forgiveness or

[68] For example, a Rule 10b5–1 plan for the sale of securities held by a member of an executive officer's immediate family, as defined in Exchange Act Rule 16a–1(e) [17 CFR 240.16a–1(e)], sharing the same household as the executive officer would be reportable. However, Instruction 3 to proposed Item 10 would not require disclosure of a director's or executive officer's enrollment in a broad-based employee benefit plan for the acquisition of registrant equity securities through payroll deduction.

[69] The director's or executive officer's obligations to report these subsequent transactions under Section 16(a) and to file a Form 144, where applicable, would not be affected.

payment and the number and class of any securities foreclosed upon.

Questions regarding disclosure of company loans and guarantees:

- Should this disclosure be required only if the company's equity securities are pledged or pledged without recourse?
- Should loans of less than $100,000 be excluded from Item 10?
- Should disclosure also apply with respect to any loan to members of the immediate family of a director or executive officer, to any corporation or organization in which a director or executive owner beneficially owns ten percent or more of any class of equity security, or to any trust or other estate in which the director or executive officer has a substantial beneficial interest or serves as trustee or in a similar capacity? [70]
- Is the scope of Item 10 as proposed, including loans (and guarantees or similar arrangements) by the company and its affiliates, too broad? If so, in what manner?
- If Item 10 is adopted as proposed, requiring rapid disclosure of these loans and guarantees, should the Commission consider rescinding any portion of other disclosure requirements regarding management indebtedness?

E. Anticipated Transition

Assuming proposed Item 10 is adopted, we will need to provide for a transition. We expect that the proposal would become effective 60 days following **Federal Register** publication of the final rule, and that transactions occurring on and after that date would be reportable under paragraph (a).

However, because companies may need to establish procedures to capture and report information about derivative securities transactions on an accelerated basis, we would expect to delay for an additional 60 days compliance with the obligation to report these transactions within two business days if the transaction's aggregate value is $100,000 or more. For the first 60 days after the effective date, derivative securities transactions would be reportable not later than the close of business on the second business day of the week following the week in which the transaction occurred, without regard to aggregate value.

Rule 10b5–1 arrangements and loans entered into before the effective date remaining in effect on the effective date would be of equal significance to investors as those entered into later. Accordingly, we would expect to require companies to report them under paragraphs (b) and (c), respectively, on (or within a short period after) the effective date.

Questions regarding transition:

- Would the phased-in transition schedule described above for derivative securities transactions be appropriate for these transactions or any other category of transaction?
- Were pre-existing Rule 10b5–1 arrangements entered into with privacy expectations that would warrant transition treatment different from that proposed above?

—If so, how should these arrangements be treated for transition purposes?

IV. General Request for Comment

We invite any interested person wishing to submit written comments on this proposed amendment to Form 8–K, the related amendments to Securities Act Rule 144 and Securities Act Forms S–2, S–3 and S–8, and any other matters that might have an impact on the proposed amendments, to do so. We specifically request comments from investors, companies that would be required to file Item 10 information, directors and executive officers, broker-dealers, portfolio managers, and other fiduciaries.

As described in greater detail in Section III above, we request comment regarding:

- What persons' Item 10 events should be reportable;
- What companies should be required to report;
- Implementation costs to companies;
- Appropriateness of reporting deadlines and dollar thresholds;
- Proposed Commission finding regarding company liability for violations;
- Filed status of reports and effect on Rule 144 and short-form Securities Act registration;
- Reportable and exempt transactions;
- Content and format of reports;
- Proposed Item 10's relationship to Section 16(a) reports;
- Accelerated Section 16(a) reporting of officers' and directors' transactions with the company;
- Derivative securities disclosure;
- Disclosure of Rule 10b5–1 arrangements; and
- Disclosure of company loans and guarantees.

In addition, we request your comment on the following subjects:

Questions regarding benefit and practicability:

- Will the proposal provide meaningful, timely information to investors?
- As drafted, is the proposed amendment easy to understand and practical to implement?

Questions regarding website access:

- Should the Commission encourage companies to post on their web sites the information reportable on an Item 10 Form 8–K? [71]

—If so, in what manner?

We will consider all comments responsive to this inquiry in complying with our responsibilities under Section 23(a) of the Exchange Act.[72]

V. Sample Item 10 Disclosure

As an aid to explaining this proposal, we have prepared the following sample disclosure:

Item 10. Transactions by Directors and Executive Officers

(a)(1) Acquisitions/Dispositions of Equity Securities

Name and title of director/ executive officer	Date of transaction	Title and number of securities involved in transaction	Per share acquisition/disposition price	Aggregate value of transaction	Description of nature of transaction
John Jones/CEO	2/19/02	25,000 shares common stock.	$14.10	$352,500	Sold shares in open market transaction.
Jane Smith/Director	2/20/02	4,000 shares Series A preferred stock.	30.00	120,000	Purchased shares in open market transaction.

[70] Item 404(c) of Regulation S–K, which requires disclosure of any director's or executive officer's indebtedness to the company or its subsidiaries at any time since the beginning of the company's last fiscal year in an amount in excess of $60,000, also requires disclosure of these loans.

[71] Today we also issue a companion release, Securities Exchange Act Release No. 45741 (Apr. 12, 2002), that includes, among other things, a proposal regarding website access to Forms 10–K, 10–Q and 8–K filed by certain companies. This proposal would address web site access to Item 10 Forms 8–K filed by some, but not all, companies subject to Item 10 disclosure.

[72] 15 U.S.C. 78w(a).

(a)(2) Acquisitions/Dispositions of Derivative Securities

Name and title of director/executive officer	Date of transaction	Number of derivative securities involved in transaction	Per share exercise/conversion price	Price (if any) of derivative security	Exercisability/expiration dates of derivative security	Title and number of underlying securities	Description of nature of transaction
Norman Young/CAO.	2/19/02	([1])	14.00	([1])	Exercisable commencing 2/19/02; expiring 2/19/03.	10,000 shares of common stock.	Agreement to sell securities—hedging transactions.([1])
Theresa White/Vice President.	2/20/02	2,500	14.25	0	([2])	2,500 shares of common stock.	Received employee stock option grant.

[1] On February 19, 2002, Norman Young, the Chief Accounting Officer of the registrant, entered into a ''swap'' agreement with XYZ Brokerage Firm (''XYZ'') pursuant to which, on February 19, 2003, XYZ will be required to pay to Mr. Young an amount equal to the current market value of 10,000 shares of registrant's common stock, or $140,000, and Mr. Young will be required to pay XYZ an amount equal to the then-current market value of 10,000 shares of the registrant's common stock. In addition, Mr. Young has agreed to pay XYZ, as a fee, an amount equal to ¼ of one percent of the current market value of the 10,000 shares of registrant's common stock subject to the agreement and that, to the extent that the registrant declares and pays any dividend on its common stock during the term of the agreement, any such amounts will be paid to XYZ. XYZ has agreed to pay to Mr. Young an amount equal to the ''prime'' interest rate on $140,000 during the term of the agreement.

[2] Employee stock option is exercisable in four equal annual installments, beginning on the first anniversary of the date of grant. The option will expire on February 19, 2012.

(a)(3) Exercises/Conversions of Derivative Securities

Name and title of director/executive officer	Date of transaction	Number of derivative securities involved in transaction	Per share exercise/conversion price	Title and number of underlying securities	Description of nature of transaction
John Jones/CEO	2/19/02	5,000	$4.50	5,000 shares of common stock.	Exercised employee stock option.

(b)(1) Rule 10b5–1 Plans

On February 20, 2002, Tom Johnson, the Chief Financial Officer of the registrant, entered into a plan with ABC Brokerage Firm, pursuant to which ABC will undertake to sell 25,000 shares of the common stock of the registrant currently owned by Johnson at specified intervals through the end of 2002.

On February 22, 2002, Donald Cummings, the registrant's Vice-President for sales, modified a previously reported sales plan with XYZ Brokerage Firm to decrease the number of shares of registrant common stock subject to sale on a monthly basis pursuant to the plan, and to decrease the limit order price at which the shares may be sold under the plan. These modifications will reduce to 18,000 the aggregate number of shares that may be sold by Mr. Cummings pursuant to the plan.

On February 22, 2002, Patricia Brown, the registrant's vice-president for administration, terminated her previously reported sales plan with LMN Brokerage Firm.

(c) Loans

On February 19, 2002, the registrant agreed to loan Sandra Green, a member of the registrant's board of directors, $50,000 for the purpose of purchasing 10,000 shares of the registrant's common stock through the exercise of a stock option previously granted to Ms. Green on May 1, 1999. The loan, which is immediately available, will bear interest at the rate of four percent per annum and will be evidenced by a written promissory note containing the following terms. Interest will accrue during the term of the loan, which is five years. Principal and accrued interest will be due and payable at the expiration of the loan term. The loan will be non-recourse. Under the provisions of the note, the registrant's board of directors has the discretion to forgive any repayment of principal and interest if the board deems such action to be in the best interests of the registrant. The 10,000 shares of the registrant's common stock to be acquired with the loan proceeds will secure repayment of the loan. These shares will be held in escrow for the benefit of the registrant pending repayment or substitution of additional or different collateral in form and amount satisfactory to the registrant.

VI. Paperwork Reduction Act

The proposed amendment to Form 8–K contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [73] (''PRA''). We are submitting the proposed amendment to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[74] The title for the collection of information is ''Form 8–K.'' An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Form 8–K (OMB Control No. 3235–0060) was adopted pursuant to Sections 13(a), 15(d), and 23 of the Exchange Act and prescribes information, such as material events or corporate changes that a company must disclose. Preparing and filing a current report on Form 8–K is a collection of information.

A. Summary of Proposed Amendment

The proposed amendment would add a new item, Item 10, to Form 8–K. Item 10 would require companies with a class of equity securities registered under Section 12 of the Exchange Act to disclose certain information about directors' and executive officers' transactions in company equity securities (including derivative securities transactions and transactions with the company), directors' and executive officers' arrangements for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1, and loans of money to directors and executive officers made or guaranteed by the company or its affiliates.

Generally, current reports of transactions and loans would be due within two business days if the event has an aggregate value of $100,000 or more. Reports of transactions and loans with a smaller aggregate value, grants and awards pursuant to employee benefit plans, and Rule 10b5–1 arrangements would be due by the close of business on the second business day of the week following the week in which the event occurred.

We are proposing this amendment to alert investors to shifts in the alignment

[73] 44 U.S.C. 3501 *et seq.*

[74] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

between management's and shareholders' economic interests. The proposed amendment, particularly with respect to derivative securities used for hedging purposes, also would disclose transactions by directors and executive officers that in effect sever the link between executive compensation and company equity securities performance. Finally, we believe that the proposed amendment would provide investors with timely disclosure of potentially useful information as to management's views of the performance and prospects of the company, thereby enabling investors to make better informed investment decisions. The collection of information will be mandatory for all companies with a class of equity securities registered under Section 12 of the Exchange Act. There will be no mandatory retention period for the information collected. The collection of information will not be kept confidential.

B. Reporting and Cost Burden Estimates

The reporting and cost burden estimates for the proposed collection of information are based on the following assumptions. The likely respondents that will be subject to the proposed collection of information include entities with a class of equity securities registered under Section 12 of the Exchange Act. We estimate that there are approximately 10,100 entities that fit this description.[75] We estimate that, as a result of the proposed amendment, each respondent will make approximately 21 disclosures per year.[76]

Based on a burden hour estimate of three hours,[77] we estimate that each respondent will incur 63 burden hours[78] to prepare and file the required disclosures and that, in the aggregate, all respondents will incur 636,300 burden hours[79] to prepare and file the required disclosures.

We anticipate that respondents will retain outside counsel to assist in the preparation and filing of the required disclosures.[80] Of the total burden resulting from the proposed amendments, seventy-five percent is reflected as burden hours and the remainder is reflected in the total cost of complying with the information collection requirements. We estimate that the total dollar cost of complying with Item 10 Form 8–K, including outside counsel costs, will be $70,756,500, an increase of $47,722,500 from the current annual burden of $23,034,000 for Form 8–K.

C. Request for Comment

We request comment in order to (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information, (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected, and (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[81]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Commenters may wish to consider whether the proposed collection of information with respect to directors' and executive officers' transactions could reduce collection of information burdens with respect to reporting those transactions under Section 16(a) of the Exchange Act. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609, with reference to File No. S7–09–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–09–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VII. Costs and Benefits

A. Background

The current system of federal securities regulation is based on full disclosure; an approach that provides a cost-effective means for markets to allocate capital. In order to function effectively, however, there must be full, clear and timely disclosure to support the market's allocation decisions. Investors should have access to important corporate information when it would be of greatest benefit to them.

[75] This estimate is based on the total number of companies that filed proxy (9,892) or information (253) statements during the 2000 fiscal year, which are required of all issuers registered under Section 12 of the Exchange Act.

[76] This estimate is based on (a) a review of the number of reports filed by officers and directors under Section 16(a) of the Exchange Act during the period February—December 2000 (projected over a 12-month period), (b) consultations with several law firms who advise registrants on compliance with Exchange Act Rule 10b5–1, and (c) a review of related-party transactions disclosed in proxy and information statements filed during the 2001 fiscal year. This review leads to the following estimates. First, approximately 200,000 transactions in company equity securities by executive officers and directors would be subject to disclosure under Item 10 of Form 8–K. (This estimate is based upon assumptions that (i) the 69,900 transactions in excess of $100,000 would each require a separate Form 8–K, (ii) the 62,550 transactions with a value less than $10,000 would be reported on a deferred basis, with 20% of these transactions included on Forms 8–K filed to disclose other transactions and the remaining 80% reported in groups of three, and (iii) the remaining 186,000 transactions would generate 113,250 Forms 8–K after taking into account that generally option grants are made on the same date, option exercise and sale activity tends to occur during corporate trading periods, and option exercises and sales by individual officers and directors tend to occur on successive days (all of which would be multiple transactions to be disclosed on a single Form 8–K).) Second, approximately 7,600 transactions by executive officers and directors involving Exchange Act Rule 10b5–1 arrangements would be subject to disclosure under Item 10 of Form 8–K. (This estimate is based upon a sampling of press releases for 23 registrants, of whom approximately 50% disclosed Exchange Act Rule 10b5–1 arrangements covering 39 officers and directors. These figures were then projected on the total number of companies with a class of securities registered under Section 12 of the Exchange Act—10,100—to produce 5,050 companies with an average of three disclosures each year. The resulting total was reduced by 50% to reflect that many of these disclosures would be reported on the same Form 8–K.) Finally, approximately 7,900 company loans to executive officers and directors would be subject to disclosure under Item 10 of Form 8–K. (This estimate is based upon a sampling of 50 proxy statements, of which 26% reflected corporate loans covering 39 separate transactions with executive officers and directors. These figures were then projected on the total number of companies with a class of securities registered under Section 12 of the Exchange Act —10,100—to produce 2,626 companies with an average of three loans each.) Distributed across the number of companies with a class of equity securities registered under Section 12 of the Exchange Act, this results in an average of 21 disclosures per company (215,500/10,100).

[77] This estimate is based on consultations with several law firms and other persons who regularly complete Forms 8–K and/or Forms 4 and 5.

[78] (21 disclosures × three hours).

[79] (10,100 companies × 63 hours).

[80] We have used an estimated hourly rate of $300.00 to determine the estimated cost to respondents of the disclosure prepared by outside counsel. We arrived at this hourly rate estimate after consulting with several private law firms. (10,100 × 63 hours × 25% × $300.00 = $47,722,500).

[81] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

Under current regulations, information about the relationship between executive compensation and company securities performance, the extent to which management's economic interests are aligned with those of shareholders through ownership of company equity securities, and management's transactions with and relationships to the company beyond the scope of employment that could affect management's performance of its fiduciary duties must be updated annually in the company's annual report on Form 10–K or Form 10–KSB. In addition, information about directors' and officers' transactions in company equity securities is reportable by the directors and officers under Section 16(a) of the Exchange Act within 10 days after the close of the month in which the reportable transaction occurs or, in some instances, within 45 days after a company's fiscal year end.

Technological developments that have significantly reduced timeframes for the capture and analysis of information necessitate a new consideration of the timing of mandated disclosure to the markets. The proposed amendment would add a new item, Item 10, to Form 8–K. Item 10 would require companies with a class of equity securities registered under Section 12 of the Exchange Act to disclose certain information about directors' and executive officer's transactions in company equity securities (including derivative securities transactions and transactions with the company), directors' and executive officers' arrangements for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1, and loans of money to directors and executive officers made or guaranteed by a company or its affiliate.

Generally, current reports of transactions and loans would be due within two business days if the event has an aggregate value of $100,000 or more. Reports of transactions and loans with a smaller aggregate value, grants and awards pursuant to employee benefit plans, and Rule 10b5–1 arrangements would be due by the close of business on the second business day of the week following the week in which the event occurred.

B. Benefits

Requiring companies to file current reports disclosing information about directors' and executive officers' transactions, Rule 10b5–1 arrangements, and loans (or loan guarantees) by the company or its affiliates should enable investors to make investment and voting decisions on a more timely and better-informed basis, protect investors, and promote fair dealing in company equity securities. Current information regarding changes in directors' and executive officers' holdings of company equity securities would reveal shifts in the alignment between management's and shareholders' economic interests. Such current information, particularly with respect to derivative securities used for hedging purposes, would disclose transactions by directors and executive officers that in effect sever the link between executive compensation and company equity securities performance.

Making available current information regarding directors' and executive officers' transactions in company equity securities also would provide public investors timely disclosure of potentially useful information as to management's views of the performance and prospects of the company. Many public investors believe that such current disclosure is necessary for them to make informed investment decisions. [82]

Similarly, current disclosure that a director or executive officer has entered into, modified or terminated a Rule 10b5–1 contract, instruction or written plan for the purchase or sale of company equity securities would provide public investors with more complete disclosure of useful information as to the performance and prospects of the company. Finally, current disclosure of loans (and loan guarantees) by the company or its affiliates to directors and executive officers would inform investors of financial arrangements not generally available to shareholders that may result in the receipt of *de facto* additional compensation by the director or executive officer.

Currently, it is difficult for investors to ascertain whether a director or executive officer has engaged in a transaction involving company equity securities until 10 days after the end of the month in which the transaction occurred or, in some instances, until 45 days after the end of the fiscal year in which the transaction occurred. Further, currently there are no disclosure requirements with respect to Rule 10b5–1 arrangements and loan guarantees, and only limited disclosure concerning company loans to directors and executive officers. Current disclosure of information about these events would enhance investor confidence in the markets. Thus, we believe that the proposed amendment will increase market transparency, encouraging continued widespread investor participation in our markets, which will enhance market efficiency and liquidity. These benefits are difficult to quantify, but are viewed by many investors and investor groups as significant.

C. Costs

The proposed amendment would impose additional costs on companies with a class of equity securities registered under Section 12 of the Exchange Act. Those companies would be required to file additional current reports on Form 8–K to disclose information each time a director or executive officer engaged in a transaction in company equity securities or similar disclosable events. A company would be required to compile the relevant information and prepare and file the required Form 8–K.

The proposed amendment also may lead to increased costs for companies resulting from new or enhanced systems and procedures for disclosure practices. Companies that do not currently assist their officers and directors to comply with Section 16(a) of the Exchange Act may need to develop practices and procedures for compiling information about corporate securities transactions by their directors and executive officers. While we believe that many companies already have internal procedures for identifying and reporting these transactions, some companies would need to institute appropriate procedures. These costs are difficult to quantify. We do not have data to quantify the cost of implementing, or enhancing and strengthening existing, internal monitoring procedures, and we seek your comments and supporting data on these costs.

The required disclosure will provide investors both with new information and with an alternative, accelerated, and more readily accessible source for currently available information. Because the size and scope of compliance is likely to vary among companies, it is difficult to provide an accurate cost estimate with which all parties will agree. We believe that a company's internal professional staff will expend approximately 75% of the burden hours associated with compliance and that the remaining 25% will be expended by outside counsel. Assuming a cost of $85.00 per hour for in-house professional staff and $300.00 per hour for outside counsel, we believe that the total cost will be approximately $416.00

[82] *See* n. 27, above.

per filing.[83] For purposes of the PRA we estimated that there will be approximately 215,255 Item 10 Form 8–K reports filed each year.[84] Thus, based on these assumptions, the aggregate cost of the proposed amendments will be approximately $89,546,000 each year.

D. Request for Comments

Throughout this release we have solicited comment on variations to this proposal that would alter the scope of the proposal, including the affected parties and the burdens placed on them. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendment. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[85] This IRFA involves a proposed amendment to Form 8–K that would expand the disclosure requirements with respect to directors' and executive officers' transactions in company equity securities and certain similar events. Specifically, the proposed amendment would add a new item, Item 10, to Form 8–K. Item 10 would require companies with a class of equity securities registered under Section 12 of the Exchange Act to disclose information about directors' and executive officers' transactions in company equity securities (including derivative securities transactions and transactions with the company), directors' and executive officers' arrangements for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1, and loans of money to directors and executive officers made or guaranteed by a company or its affiliates.

A. Reasons for, and Objectives of, Proposed Amendment

The proposed amendment addresses investor concerns about a lack of timely access to information about directors' and executive officers' transactions involving company equity securities, and other events relating to the market for company equity securities, the relationship between executive compensation and company securities performance and the relationship between management and the company. These concerns may be especially acute for investors in small entities, where this information may be difficult to obtain. Advances in technology and the increased dependence on the ready availability of current corporate information have reshaped the way our markets operate. The proposed amendment enhances rapid access to this information, thereby protecting investors by enabling them to make informed investment decisions and promoting fair dealing in a company's equity securities. By addressing these issues, the proposed amendment would enhance investor confidence in the fairness and integrity of the securities markets.

B. Legal Basis

We are proposing the amendment to Form 8–K under the authority set forth in Sections 12, 13(a), 15(d), and 23(a) of the Exchange Act. Related amendment to Securities Act Rule 144 and Securities Act Forms S–2, S–3, and S–8 are proposed under the authority set forth in Sections 3(b) and 19(a) of the Securities Act.

C. Small Entities Subject to the Proposed Amendment

The proposed amendments would affect companies that have a class of equity securities registered under Section 12 of the Exchange Act that are small businesses. Exchange Act Rule 0–10(a) [86] defines the term ''small business'' to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[87] We estimate that there are approximately 2,500 companies subject to the reporting requirements of Section 13 of the Exchange Act that have assets of $5 million or less.[88] We further estimate that approximately 1,800 of these companies have a class of equity security registered under Section 12 of the Exchange Act.[89]

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendment would impose new reporting requirements by requiring the filing of an Item 10 Form 8–K by all companies with a class of equity securities registered under Section 12 of the Exchange Act, including ''small businesses,'' when any of their directors or executive officers engage in a transaction involving company equity securities or similar disclosable events. Generally, an Item 10 Form 8–K would be due within two business days following a reportable transaction or loan with an aggregate value of $100,000 or more with respect to an individual director or executive officer. Transactions and loans with a lower dollar value, grants and awards pursuant to employee benefit plans, and Rule 10b5–1 arrangements would be reportable not later than the close of business on the second business day of the week following the event. Consequently, the proposed amendment would increase the costs associated with compliance with companies' Exchange Act reporting obligations.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed amendment, except as follows. A significant portion of the information that would be reported by a company, specifically directors' and executive officers transactions in company equity securities, is reportable by directors and officers under Section 16(a) of the Exchange Act. However, these reports are filed too slowly for the public to obtain the maximum benefit from the information disclosed, and are not always readily accessible because they need not be filed electronically.[90] Further, Section 16(a) filings do not report two categories of information—directors' and executive officers' Rule 10b5–1 arrangements and their receipt of loans (or loan guarantees) from the company or its affiliates—that we believe are of equal market value and also should be reported on a current basis. Currently, information about management indebtedness to the company is disclosable by the company annually. However, this information also is filed too slowly for the public to obtain the maximum benefit from the information disclosed, and does not address company (or company affiliate) guarantees of third-party loans.

We have requested comment whether it would be feasible or desirable to permit officers and directors to satisfy their Section 16(a) reporting obligations by attaching a Form 4 to the company's Item 10 Form 8–K reporting the same

[83] (Three hours per response × 75% × $85.00 = $191.25) + (three hours per response × 25% × $300.00 = $225.00).

[84] See n. 76 above and the accompanying text.

[85] 5 U.S.C. 603.

[86] 17 CFR 240.0–10(a).

[87] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[88] This estimate is based on filings with the Commission.

[89] This estimate is based on a comparison of the number of issuers that filed annual reports on Form 10–K (10,381) and 10–KSB (3,641) during the 2001 fiscal year and the number of issuers that filed proxy (9,892) or information (253) statements during the 2001 fiscal year.

[90] With respect to transactions that involve sales, notices of proposed sales also may be required on Form 144 [17 CFR 239.144].

transaction, and whether we should adopt a pilot program in which companies could voluntarily enroll to use this procedure. We have requested comment whether a company should be able to satisfy its Item 10 Form 8–K reporting obligation by adding Form 8–K header information to an officer's or director's Form 4. We also have requested comment whether any portions of current management indebtedness disclosure should be rescinded.

F. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish the stated objective, while minimizing adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Differing compliance or reporting requirements that take into account the resources of small entities, (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities, (c) the use of performance rather than design standards, and (d) an exemption from the coverage of the proposed amendment for small entities.

The proposed amendment is intended to elicit information that would be useful to investors in evaluating the relationship between executive compensation and company securities performance, the extent to which management's economic interests are aligned with those of shareholders through ownership of company equity securities, and management's transactions with and relationships to the company beyond the scope of employment that could affect management's performance of its fiduciary duties.

We have solicited comment as to whether small business issuers should be excluded from the proposed amendment. It is possible, however, that different compliance or reporting requirements for small entities may not be appropriate because this disclosure is important to investors in small, as well as large, entities. Also, it may not be feasible to further clarify, consolidate or simplify the proposed amendment for small entities because, as contemplated, the proposed amendment requires only minimal information about directors' and executive officers' transactions in company equity securities. Finally, for the reasons just discussed, it may be inconsistent with the purposes of the Exchange Act to use performance standards to specify different requirements for small entities or to exempt small entities from the coverage of the proposed amendment.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed amendment, the nature of the impact, how to quantify the number of small businesses that would be affected, and how to quantify the impact of the proposed amendment. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendment is adopted, and will be placed in the same public file as comments on the proposed amendment.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[91] we must advise the Office of Management and Budget as to whether the proposed amendment constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Where a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendment on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act[92] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendment is intended to improve the quality and timeliness of information available to investors about directors' and executive officers' transactions in company equity securities and certain related transactions. We do not believe that the proposed amendment would impose any burden on competition, except as follows. Companies will incur costs in complying with the proposed amendment. These costs will include preparation and filing expenses. These costs also may include expenses associated with establishing practices and procedures to ensure compliance. The proposed amendment may impose a significantly disproportionate cost on smaller businesses, thereby placing them at a competitive disadvantage. We request comment on whether the proposed amendment, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[93] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed amendment is intended to improve the quality and timeliness of information available to investors about directors' and executive officers' transactions in company equity securities and similar disclosable events. We believe that the availability of this information to investors should bolster investor confidence in the securities markets. Increasing the transparency of director and executive officer securities transactions should result in better monitoring by investors. This may result in better corporate governance, thereby increasing the efficiency of the company. This should promote capital formation. In addition, the availability of enhanced, more timely disclosure should lead to a more efficient market.

We do not believe that the proposed amendment would impose any burden on competition, except as follows. Companies would incur costs in complying with the proposed amendment. These costs will include preparation and filing expenses. These

[91] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[92] 15 U.S.C. 78w(a).

[93] 15 U.S.C. 78c(f).

costs also may include expenses associated with establishing practices and procedures to ensure that companies compile information regarding reportable events on a timely basis. The proposed amendment may impose a significantly disproportionate cost on smaller businesses, thereby placing them at a competitive disadvantage. We request comment on whether the proposed amendment, if adopted, would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13(a), 15(d) and 23(a) of the Exchange Act.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239 and 249

Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

2. The authority citations following § 230.144 are removed.

3. Section 230.144 is amended by adding a sentence at the end of paragraph (c)(1) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) *Current public information.* * * *

(1) *Filing of reports.* * * * For purposes of this paragraph, an issuer will be considered as having filed all of the reports required to be filed under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)) notwithstanding that the issuer may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of the form.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. Section 239.12 is amended by revising paragraph (c) to read as follows:

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

(c) The registrant:

(1) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) and has filed all the material required to be filed pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(2) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) § 240.12b–25(b) of this chapter under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section. For purposes of this paragraph, a registrant will be considered as having filed all the material required to be filed under section 13 or 15(d) of the Exchange Act and as having filed in a timely manner all reports required to be filed notwithstanding that the registrant may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of Form 8–K; and

* * * * *

6. Form S–2 (referenced in § 239.12) is amended by adding a sentence at the end of General Instruction I.C to read as follows:

Note— The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–2

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–2

* * * * *

C. * * * For purposes of (1) and (2) in the preceding sentence, a registrant will be considered as having filed all the material required to be filed under section 13 or 15(d) and as having filed in a timely manner all reports required to be filed notwithstanding that the registrant may not have timely filed one or more current reports on Form 8—K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of Form 8–K.

* * * * *

7. The authority citations following § 239.13 are removed.

8. Section 239.13 is amended by revising paragraph (a)(3) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) Registrant requirements. * * *

(3) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) § 240.12b–25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section. For purposes of this paragraph, a registrant will be considered as having filed all the material required to be filed under section 13 or 15(d) of the Exchange Act and as having filed in a timely manner all reports required to be filed notwithstanding that the registrant may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an

event or events specified in Item 10 of Form 8–K; and

* * * * *

9. Form S–3 (referenced in § 239.13) is amended by adding a sentence at the end of General Instruction I.A.3 to read as follows:

Note—The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. Registrant Requirements.

* * * * *

3. * * * For purposes of (a) and (b) in the preceding sentence, a registrant will be considered as having filed all the material required to be filed under section 13 or 15(d) of the Exchange Act and as having filed in a timely manner all reports required to be filed notwithstanding that the registrant may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of Form 8–K.

* * * * *

10. Section 239.16b is amended by revising the introductory text of paragraph (a) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the ''Act'') of the securities listed in paragraphs (a)(1) and (a)(2) of this section. For purposes of this paragraph, a registrant will be considered as having filed all reports and other materials required to be filed by the requirements of Sections 13 or 15(d) notwithstanding that the registrant may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of Form 8–K:

* * * * *

11. Form S–8 (referenced in § 239.16b) is amended by revising the introductory text of General Instruction A.1. to read as follows:

Note—The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–8

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

A. Rule as to Use of Form S–8

1. Any registrant that, immediately prior to the time of filing a registration statement on this Form, is subject to the requirement to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act''), and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this Form for registration under the Securities Act of 1933 (''Act'') of the securities listed in paragraph 1(a). For purposes of this paragraph 1, a registrant will be considered as having filed all reports and other materials required to be filed by the requirements of Sections 13 or 15(d) of the Exchange Act notwithstanding that the registrant may not have timely filed one or more current reports on Form 8–K (§ 249.308 of this chapter) required to be filed solely to disclose the occurrence of an event or events specified in Item 10 of Form 8–K:

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

13. Form 8–K (referenced in § 249.308) is amended by adding six sentences to the end of paragraph 1 of General Instruction B and by adding Item 10 under ''Information to Be Included in the Report'' to read as follows:

Note—The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * Item 10 applies only to registrants with a class of equity security (as defined in § 240.3a11–1 of this chapter) registered under Section 12 of the Act. A registrant must file a report of any event specified in paragraphs (a) and (c) of Item 10 with an aggregate value of $100,000 or more (other than a grant or award pursuant to an employee benefit plan) within two business days. The registrant must file a report of any grant or award pursuant to an employee benefit plan, any event specified in paragraphs (a) and (c) of Item 10 with an aggregate value less than $100,000, and any event specified in paragraph (b) of Item 10 not later than the close of business on the second business day of the week following the week in which the event occurred. However, the registrant may defer reporting any event specified in paragraphs (a) and (c) with an aggregate value not exceeding $10,000 until the aggregate cumulative value of those unreported events with respect to the same executive officer or director exceeds $10,000. The Commission hereby finds that it is not in the public interest to impose any sanction on a registrant, notwithstanding a violation, that demonstrates that (1) at the time of the violation, it had designed procedures and a system for applying such procedures sufficient to provide reasonable assurances that Item 10 events are timely reported, (2) at the time of the violation, the registrant followed those procedures, and (3) as promptly as reasonably practicable, the registrant made a filing to correct any violation.

* * * * *

Information To Be Included in the Report

* * * * *

Item 10. Transactions by Directors and Executive Officers

(a)(1) If a director or executive officer (as defined in § 240.3b–7 of this chapter) of the registrant acquires or disposes of any equity security (as defined in § 240.3a11–1 of this chapter) of the registrant, other than a derivative security (as defined in Instruction 1 to this Item), whether or not of a class registered under Section 12 of the Exchange Act, the registrant must report with respect to each transaction:

(i) The name and title of the director or executive officer;

(ii) The date of the transaction;

(iii) The title and number of securities acquired or disposed of;

(iv) The per share acquisition or disposition price, if any;

(v) The aggregate value of the transaction;

(vi) The nature of the transaction (*e.g.,* open market sale or purchase, sale to or purchase from the registrant, gift); and

(vii) Any other material information regarding the transaction.

(2) If a director or executive officer of the registrant acquires or disposes of any derivative security (as defined in Instruction 1 to this Item) with respect to the registrant, whether or not issued by the registrant, the registrant must report with respect to each transaction:

(i) The name and title of the director or executive officer;

(ii) The date of the transaction;

(iii) The number of derivative securities acquired or disposed of;

(iv) The per share exercise or conversion price (or other price, such as a notional price, used in the terms of the derivative security);

(v) The price, if any, the executive officer or director paid or received for the derivative security;

(vi) The date(s) on which each derivative security becomes exercisable (or subject to termination) and its date of expiration (or final termination);

(vii) The title and number of underlying securities (or cash equivalent) that would be acquired or disposed of upon exercise, conversion, termination, or settlement;

(viii) The nature of the transaction (*e.g.,* option grant, sale or purchase of call option, sale or purchase of put option, entering into a swap or futures contract). If the transaction involves a collar or other hedge, the registrant must so indicate and describe all material terms; and

(ix) Any other material information regarding the transaction, including contingencies applicable to exercise.

(3) If a director or executive officer of the registrant exercises, converts, terminates or settles any derivative security (as defined in Instruction 1 to this Item) with respect to the registrant, the registrant must report with respect to each transaction:

(i) The name and title of the director or executive officer;

(ii) The date of the exercise, conversion, termination or settlement;

(iii) The per share price used for exercise, conversion, termination or settlement;

(iv) The title and number of underlying shares (or cash equivalent) acquired or disposed of;

(v) The nature of the transaction (*e.g.,* exercise of option, settlement of swap agreement). If the transaction involves a collar or other hedge, the registrant shall so indicate and describe all material terms; and

(vi) Any other material information regarding the transaction.

(b)(1) If a director or executive officer of the registrant enters into any contract, instruction or written plan for the purchase or sale of equity securities of the registrant (including derivative securities as defined in Instruction 1 to this Item) intended to satisfy the affirmative defense conditions of § 240.10b5–1(c) of this chapter, the registrant must report:

(i) The name and title of the director or executive officer;

(ii) The date on which the director or executive officer entered into the contract, instruction or written plan; and

(iii) A description of the contract, instruction or written plan, including its duration, the aggregate number of securities to be purchased or sold, and the name of the counterparty or agent.

(2) If a director or executive officer of the registrant terminates or modifies any contract, instruction or written plan for the purchase or sale of equity securities of the registrant (including derivative securities as defined in Instruction 1 to this Item) intended to satisfy the affirmative defense conditions of § 240.10b5–1(c) of this chapter, the registrant must report:

(i) The name and title of the director or executive officer;

(ii) The date on which the director or executive officer terminated or modified the contract, instruction or written plan; and

(iii) A description of the modification to the contract, instruction or written plan, including any modification to its duration, the aggregate number of securities to be purchased or sold, the interval at which securities are to be purchased or sold, the number of securities to be purchased or sold in each interval, the price at which securities are to be purchased or sold, and the identity of the counterparty or agent.

(c)(1) If the registrant or an affiliate of the registrant agrees to lend or lends money to a director or executive officer of the registrant, or enters into a guarantee or similar arrangement in favor of another person who agrees to lend or lends money to the director or executive officer, the registrant must report:

(i) The name and title of the director or executive officer;

(ii) The date of each such agreement (or guarantee or similar arrangement) or loan thereunder;

(iii) The dollar amount and other material terms of the agreement or loan, and, if applicable guarantee or similar arrangement, including the interest rate, terms of repayment, and any provisions with respect to forgiveness;

(iv) The number and class of any registrant securities pledged as collateral; and

(v) The material terms of any pledge, including whether it is made with or without recourse.

(2) If any loan described in paragraph (c)(1) to this Item is forgiven, if the registrant or its affiliate makes payment on its guarantee or similar arrangement, or if any collateral is foreclosed upon, the registrant must report:

(i) The name and title of the director or executive officer; and

(ii) The date on which the forgiveness, payment or foreclosure occurred, and the dollar amount of forgiveness or payment and the number and class of any securities foreclosed upon.

Instructions.

1. For purposes of this Item, ''derivative security'' includes instruments defined as ''derivative securities'' in § 240.16a–1(c), as well as rights with a value derived from the value of an equity security that have an exercise or conversion privilege at a price that is not fixed.

2. The registrant's disclosure obligations under paragraph (a) of this Item apply to any transaction in which the director or executive officer has a pecuniary interest, as defined in § 240.16a–1(a)(2)(i), other than transactions that satisfy the exemptive conditions of § 240.16a–2(d), § 240.16a–3(f)(1)(i)(B), § 240.16a–9, § 240.16a–11, § 240.16a–12, § 240.16a–13, § 240.16b–7, and § 240.16b–8 of this chapter, and transfers by will or the laws of descent and distribution. The registrant is not required to disclose trust transactions that the director or executive officer is not required to report pursuant to § 240.16a–8.

3. The disclosure obligations of paragraph (b) of this Item apply to any contract, instruction or written plan for the purchase or sale of equity securities of the registrant in which the director or executive officer has a pecuniary interest, as defined in § 240.16a–1(a)(2)(i), other than a director's or executive officer's enrollment in a broad-based employee benefit plan for the acquisition of registrant equity securities through payroll deduction. However, paragraph (a) disclosure is required of transactions in these plans that are volitional intra-plan transfers involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security, unless the transaction is made in connection with the director's or executive officer's death, disability, retirement or termination of employment, or is required to be made available to plan participants pursuant to the Internal Revenue Code.

Dated: April 12, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9455 Filed 4–22–02; 8:45 am]

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Federal Register

Tuesday,
April 23, 2002

Part VII

Department of Health and Human Services

Centers for Disease Control and Prevention

National Cancer Prevention and Control Program; Notice of Availability of Funds; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060]

National Cancer Prevention and Control Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the National Cancer Prevention and Control Program (NCPCP). This program addresses the ''Healthy People 2010'' focus area(s) related to cancer.

This Program Announcement is issued in an effort to simplify and streamline the grant pre-award and post-award administrative process, measure performance related to each grantee's stated objectives and identify and establish the long-term goals of a NCPCP program through stated performance measures. Examples of the benefits of the streamlined process are: consistency in reporting expectations; and the ability for grantees to advance to the Implementation level for the National Comprehensive Cancer Control Program (NCCCP) or Enhancement level for the National Program of Cancer Registries (NPCR) based on performance when funds are available.

This Announcement incorporates funding guidance for the following three components: the National Comprehensive Cancer Control Program (NCCCP) (previously awarded under Program Announcements #99046, and #01115); the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), (previously awarded under Program Announcements #97018, #96023, #99052, and #01038); and the National Program of Cancer Registries (NPCR) (previously awarded under Program Announcement #00027).

The NCPCP will assist States/District of Columbia/Tribes/Territories in developing, implementing, maintaining, enhancing, integrating, and evaluating a cancer program inclusive of cancer surveillance, prevention and early detection programs, and which focuses on eliminating health disparities. The purpose of each of the three programmatic components within the NCPCP follows.

A.1. NCCCP

The NCCCP component supports the planning and implementation of comprehensive cancer control activities. CDC defines comprehensive cancer control as an integrated and coordinated approach to reduce the incidence, morbidity and mortality of cancer through prevention, early detection, treatment, rehabilitation, and palliation.

A.2. NBCCEDP

The NBCCEDP component supports the development of systems to assure breast and cervical cancer screening for low income, underserved, uninsured women with special emphasis on reaching those who are geographically or culturally isolated, older, or members of racial/ethnic minorities. Components of the NBCCEDP include surveillance, partnership development, screening, referral and follow-up, quality assurance, public and provider education, and evaluation. These components are carried out at the local, State and national levels through collaborative partnerships with State health agencies, community-based organizations, tribal governments, universities, a variety of medical care providers and related agencies and institutions, and the business and voluntary sectors. These partners work together to develop, implement and evaluate strategies to promote breast and cervical cancer prevention and early detection, to increase access to related services and to improve the quality and timeliness of the services.

A.3. NPCR

The NPCR component supports efforts to establish population-based cancer registries where they do not exist and to improve existing cancer registries.

Throughout this program announcement, to the extent possible, information that is specific to the three individual components has been grouped into a section that addresses that component only. Section G ''Specific Guidance for NCCCP'' addresses the National Comprehensive Cancer Control Program; Section H ''Specific Guidance for NCCEDP'' addresses the National Breast and Cervical Cancer Early Detection Program; and Section I ''Specific Guidance for NPCR'' addresses the National Program of Cancer Registries. These component sections include specific guidance regarding:

- Eligibility
- Availability of Funds
- Program Requirements
- Content
- Other Requirements
- Evaluation Criteria

Please refer to these specific component sections for information.

Special Guidelines for Technical Assistance

Conference Call: Technical assistance will be available for potential applicants on three conference calls.

The first call will be for States/Tribes/Territories that are in atlantic, eastern, or central time zones, and will be held on April 29, 2002 from 9:00 a.m. to 11:00 a.m. (eastern time).

The second call will be for States/Tribes/Territories that are in mountain or pacific time zones, and will be held on April 29, 2002 from 3:30 p.m. to 5:30 p.m. (eastern time).

While all information disseminated will be consistent throughout the calls, a third call will be held particularly for tribal and territorial organizations on April 30, 2002 from 4:00 p.m. to 6:00 p.m. (eastern time).

Potential applicants are requested to call in using only one telephone line. The conference can be accessed by calling 1–800–713–1971 or 404–639–4100, and entering access code 285614. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the Program Announcement for the National Cancer Prevention and Control Program;

2. Be familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the conference call, please call 404–639–7550.

B. Eligible Applicants

Applicants may apply for any or all of the components within this program announcement for which they are eligible.

B.1. Eligible for All Components

Potential applicants that are eligible for all components are the health departments of States or their bona fide agents, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. (See also Attachment A—Eligibility Table in the appendices.)

B.2. Eligible for Specific Components/Guidance

In addition to the eligible applicants listed above, potential applicants that are eligible for specific components are:

B.2.a. NCCCP

Federally recognized Indian tribal governments and tribal organizations.

B.2.b. NBCCEDP

Federally recognized Indian Tribal governments and Tribal organizations, urban Indian organizations and inter-tribal consortia (hereafter referred to as Tribes) whose primary purpose is to improve American Indian/Alaska Native health and which represent the Native population in their catchment area.

B.2.c. NPCR

Academic or nonprofit organizations designated by the State to operate the State's cancer registry.

State health departments are uniquely qualified to define the cancer problem throughout the State, to plan and develop statewide strategies to reduce the burden of cancer, to provide overall State coordination of cancer prevention and control activities among partners, to lead and direct communities, to direct and oversee interventions within overarching State policies, and to monitor critical aspects of cancer.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $178,000,000 is available in FY 2002 to fund approximately 75 awards.

It is expected that awards under this program announcement will begin on or about September 30, 2002, and will be made for a 9 month budget period for the first year which will end on June 29, 2003. Future budget periods will be 12 month periods, and will begin on June 30 of every year and run through June 29 of each following year. These budget periods will occur within a project period of up to five years. Funding estimates may change.

The level of competitiveness varies within this program announcement for each component based on whether a program is currently funded, and if funded, based on the current project period. All non-competitive applications will be reviewed by a Technical Acceptability Review process. All competitive applications for the NCCCP component will be reviewed by an Independent Objective Review Panel. Competitive applications submitted for NBCCEDP and NPCR components will undergo a Technical Acceptability Review process for applications received from States and an Independent Objective Review for applications received from Tribes and Territories.

Existing grantees, under Program Announcement Numbers 01115 (for NCCCP—Planning and Implementation Recipients), 99052, and 01038 (for NBCCEDP), or 00027 (for NPCR), will have their existing project periods extended to FY 2007 upon receipt of a technically acceptable application. Applications for these funds will be reviewed as non-competitive.

All currently funded programs whose project periods end this calendar year, as well as any new applicants, will submit competitive applications.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required progress reports and the availability of funds.

C.1. Component Funding

For specific ''Component Funding'' information, please see Sections G, H, and I.

C.2. Requested Budget Information

Applicants should submit separate budgets for each component (as well as separate budgets if applying for the Optional Funding under NCCCP) in response to this program announcement. Each detailed budget and narrative justification should support the activities for year one funding in response to this Program Announcement for FY 2002 support.

Current recipients' unobligated funds from the immediately prior budget period may be rolled into successful recipients' new awards unless they are currently in the last year of an existing project period.

Applications should follow the guidance below with respect to the development and submission of an itemized budget and justification for each component.

C.3. Use of Funds

For specific ''Use of Funds'' information, please see Sections G, H, and I.

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities and consistent with the scope of the cooperative agreement.

Funds provided under this program announcement may not be used to:

- Conduct research projects. Guidance regarding CDC's definition of ''research'' should be reviewed at *http://www.cdc.gov/od/ads/opspoll1.htm.*
- Supplant State or local funds, to provide inpatient care or treatment, or to support the construction or renovation of facilities.

Applicants are encouraged to identify and leverage mutually beneficial opportunities to interact and integrate with other State health department programs that address related chronic diseases or risk factors. This may include cost sharing to support a shared position such as a Chronic Disease Epidemiologist, Health Communication Specialist, Program Evaluator, or Policy Analyst to work on relevant activities across units/departments within the State health department. Such activities may include, but are not limited to, joint planning, joint funding of complementary activities, public health education, collaborative development and implementation of environmental, policy, systems, or community interventions and other cost sharing activities.

C.4. Recipient Financial Participation

For specific ''Recipient Financial Participation'' information, please see Sections G, H, and I.

C.5. Direct Assistance

For specific ''Direct Assistance'' information, please see Sections G, H, and I.

C.6. Funding Preferences

For specific ''Funding Preference'' information, please see Sections G, H, and I.

C.7. Funding Consideration

For specific ''Funding Consideration'' information, please see Sections G, H, and I.

D. Content

D.1. Letter of Intent

One Letter of Intent (LOI) is requested from each applicant applying for any component(s) of this program. The narrative should be no more than one single-spaced page, printed on one side, with one inch margins, and unreduced font. Your LOI will not be evaluated, but will be used to assist CDC in planning for the objective review for this program and should include the announcement number, the specific component(s) and parts of the component, if applicable, for which funds are being applied, and the name of the principal investigator.

D.2. Application Development

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan.

Applications should follow the guidance below with respect to page limitations for each component. All applications should be printed on one side, with one inch margins, using unreduced font. All materials must be provided in an unbound, one-sided, 8½ × 11″ print format, suitable for photocopying (*i.e.*, no audiovisual materials, posters, tapes, etc.).

D.3. Page Limitations

For specific ''Page Limitations'' information, please see Sections G, H, and I.

D.4 Application Outline

Applicants may apply for any or all of the components within this program announcement for which they are eligible. Please provide specific ''Application Outline'' information for each component as outlined in specific Sections G, H, and I.

E. Submission and Deadline

E.1. Letter of Intent

On or before May 15, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

E.2. Application

Submit the original and two copies of CDC Form 0.1246. Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before June 20, 2002, submit the original and two copies of the application to:

Technical Information Management (TIM), Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Please reference Program Announcement Number 02060 National Cancer Prevention and Control Program on the mailing envelope and on the application Standard Form 424, block 11. Please also make sure that block 16 on Standard Form 424, regarding Executive Order 12372 has been completed correctly.

E.3. Deadline

Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

F. Evaluation Criteria

Each application will be evaluated individually against the following criteria by either a Technical Acceptability Review Panel or an Independent Review Group appointed by CDC.

For specific ''Evaluation Criteria'' information, please see Sections G, H, and I.

G. Specific Guidance for the National Comprehensive Cancer Control Program (NCCCP)

G.1. Eligible Applicants

The NCCCP component of this Program Announcement incorporates two types of eligibility. The first type is a Planning Program. Applicants who are in the planning phase of establishing a State/Tribe/Territory wide comprehensive cancer control plan should apply as a Planning Program.

The second type of NCCCP eligibility is an Implementation Program. Applicants who have already established a comprehensive cancer control plan and need to begin implementing established priorities should apply as an Implementation Program.

Applicants are eligible for Planning or Implementation Program funding, but not both.

G.2. Availability of Funds

Approximately $2,800,000 is available to fund 14 existing NCCCP grantees under Program Announcement Number 01115. It is expected that the average amount for NCCCP Planning Program recipients will be $125,000, ranging from $100,000 to $150,000 for a project period of up to five years. The average amount for NCCCP Implementation Program recipients will be $250,000, ranging from $200,000 to $300,000 for a project period of up to five years.

In addition, approximately $1,280,000 is available in FY 2002 to fund five to eight new NCCCP recipients. The average award, range of awards, and project period for these awards are the same as above.

Existing grantees awarded under NCCCP Program Announcement Number 99046 should apply for this component competitively. If the applicant competes successfully, a new award number under this program announcement will be issued for a new five year project period. If the applicant is unsuccessful, the project period previously awarded under Program Announcement Number 99046 will remain and expire at its originally anticipated date of November 30, 2002.

Pending availability of funds, each year of the project period for this overall program announcement (9/30/02–6/29/07) will incorporate an open season for competitive applications for the NCCCP component with applications due on or about February 28. (Specific guidance with exact dates to be provided in future years.) At that time, eligible applicants may apply for Planning funds or Implementation funds but not both.

In future budget years, Planning Program recipients demonstrating success in meeting Planning Program Performance Measures and fulfilling the requirements to advance to the Implementation Program may request Implementation Program funding before the end of the full five year project period. Applicants who do not submit technically acceptable applications for Implementation funding under this scenario would continue receiving Planning funding support.

Optional Additional NCCCP Funds

Additional optional funding for NCCCP (Implementation recipients only) is available for the implementation of Cancer Plan priorities related to colorectal, ovarian, prostate, and skin cancers. Approximately $3.9 million will be distributed to support activities as follows:

- Colorectal cancer activities—$1,000,000
- Ovarian cancer activities—$1,000,000
- Prostate cancer activities—$1,500,000
- Skin cancer activities—$475,000

Approximately 15 awards to successful Implementation Program recipients are anticipated with these additional funds. It is expected that the average amount for this optional component will be $300,000, and will range from $100,000 to $700,000. These awards will be for a project period of up to five years with the exception of activities related to skin cancer. Skin cancer activities will be funded for a one year period only. These applications will be reviewed by an Independent Objective Review Panel.

G.2.a. Direct Assistance

Applicants may request Federal personnel, as direct assistance, in lieu of a portion of financial assistance.

Requests for new direct-assistance should include:

G.2.a.(1) Number of assignees requested;
G.2.a.(2) Description of the position and proposed duties;
G.2.a.(3) Ability or inability to hire locally with financial assistance;
G.2.a.(4) Justification for request;
G.2.a.(5) Organizational chart and name of intended supervisor;
G.2.a.(6) Opportunities for training, education, and work experiences for assignees; and
G.2.a.(7) Description of assignee's access to computer equipment for communication with CDC (*e.g.*,

personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

G.2.b. Use of Funds

These funds should not be used to support other existing categorical programs such as breast and cervical cancer screening, cancer registry, laboratory or clinical services, or tobacco control programs. Funds awarded under this program announcement may not be used to supplant existing program efforts. Funds may not be used to provide direct medical care.

G.2.c. Recipient Financial Participation

Recipient financial participation is not required for this program in years 1–2 of funding. Recipient financial participation may be required in years 3–5 in an amount not less than one dollar for each three dollars of Federal funds awarded under this program.

G.2.d. Funding Preference

There are no funding preferences applicable to this component.

G.2.e. Funding Consideration

Funding consideration for the NCCCP component may be based on:

G.2.e.(1) Total amount of funding available to support the NCCCP. See G.2. ''Availability of Funds'' for this information.

G.2.e.(2) The proportion of funds awarded for NCCCP activities that were spent during the budget period, if such funds were received in the past.

G.2.e.(3) The appropriate and timely use of unobligated funds from previous years, if such funds were received in the past.

G.3. Program Requirements for NCCCP

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under G.3.a. (Recipient Activities) and CDC will be responsible for the activities listed under G.3.b. (CDC Activities). All NCCCP recipient activity efforts to address tobacco use, poor oral health, poor nutrition, physical inactivity, and school health should be coordinated with State Programs focused on tobacco, oral health, nutrition, physical activity, and coordinated school health programs. Activities of these programs should not be duplicated.

G.3.a. Recipient Activities

CDC has developed performance measures to evaluate recipients' progress in meeting NCCCP requirements. These performance measures are listed following each associated recipient activity.

G.3.a.(1) Planning Activities:

G.3.a.(1)(a) Enhance comprehensive cancer control infrastructure by acquiring key staff and associated resources to produce a State/Tribe/Territory-wide comprehensive cancer control plan. Performance will be measured by the extent to which the program has (a) put in place the infrastructure for NCCCP including staff and other resources and (b) generated support, resources or secured funding to support NCCCP activities.

G.3.a.(1)(b) Mobilize support for comprehensive cancer control planning activities by assessing and building support among the public and private sectors. Build partnerships by identifying, contacting and inviting potential key private, professional, voluntary, and nonprofit cancer control organizations, policymakers, consumers, payers, media, State and Federal agencies, surveillance and data agencies, research and academic institutions, and others to become members of a new or existing State/Tribe/Territory-wide comprehensive cancer control coalition/partnership. Performance will be measured by the extent to which the program has developed or used coalitions and partners, both within (such as Breast and Cervical Cancer Early Detection Programs and the State or Territorial Central Cancer Registry) and outside of the organization and sustained these partnerships as ongoing entities by such activities as:

G.3.a.(1)(b)[1] Establishing written responsibilities (*e.g.*, in a mission statement or scope of work);

G.3.a.(1)(b)[2] Establishing written inter-organizational linkages (*e.g.*, a Memorandum of Understanding);

G.3.a.(1)(b)[3] Conducting formal assessment of members' skills and needs for education or training; or

G.3.a.(1)(b)[4] Conducting assessments of partnership member satisfaction.

G.3.a.(1)(c) Assess and address the State/Tribe/Territory cancer burden to determine the critical target areas for cancer prevention and control activities; assess gaps in strategies to address the cancer burden; develop a comprehensive cancer control plan that includes prioritized measurable goals and objectives; and identify implementing organizations for priority plan strategies. Performance will be measured by the extent to which the program has developed and used data (such as that which is available from the State or territorial central cancer registry) to define the cancer burden, set priorities and choose appropriate intervention strategies.

G.3.a.(1)(d) Conduct systematic evaluation of the comprehensive cancer control planning process and the program through identifying resources and staff for evaluation, defining planning evaluation questions, assessing the planning process, and identifying emerging challenges, solutions and outcomes of the planning process. The applicant should develop objective/quantitative measures of effectiveness that will demonstrate accomplishment of program goals and objectives and measure intended outcomes. These measures of effectiveness, through which the program will assess its own activities, should be specific to proposed activities in the work plan and should be submitted as part of this application. Performance will be measured by the extent to which the program has:

G.3.a.(1)(d)[1] Continuously evaluated and monitored its own process, objectives and activities.

G.3.a.(1)(d)[2] Developed and monitored measures of effectiveness for its proposed activities.

G.3.a.(2) Implementation Activities:

G.3.a.(2)(a) Implement priorities as established by the State/Tribe/Territory's comprehensive cancer control plan, which provides a framework for action to reduce the burden of cancer in the State/Tribe/Territory. Update and modify plan priorities and strategies to enable continual identification of critical target areas for cancer prevention and control activities; assess gaps in existing strategies to address the cancer burden; and prioritize and identify implementing organizations for emerging priority plan strategies.

Performance will be measured by the extent to which the program has:

G.3.a.(2)(a)[1] Identified partners who are implementing cancer control plan activities/strategies.

G.3.a.(2)(a)2) Established a process for assessing gaps in existing cancer control plan activities/strategies.

G.3.a.(2)(b) Enhance the organizational infrastructure by acquiring key staff and associated resources to coordinate and integrate cancer prevention and control efforts. This would include efforts to prioritize and support the implementation of cancer prevention and control activities. Identify and secure resources to support the development and dissemination of programs that will contribute to the priority areas identified within the comprehensive cancer control plan. Support organizational and stakeholder

participation in national cancer prevention, early detection, and control campaigns.

Performance will be measured by the extent to which the program has:

G.3.a.(2)(b)[1] Put in place the infrastructure for NCCCP including staff and other resources.

G.3.a.(2)(b)[2] Generated support, resources or secured funding for implementation of priorities from the comprehensive cancer control plan.

G.3.a.(2)(c) Mobilize support for cancer prevention and control activities by assessing, continuing, and building additional support (resources, political will, etc.) among the public and private sectors. Build new and enhance existing partnerships by identifying, contacting and inviting potential key private, professional, voluntary, and nonprofit cancer control organizations, policymakers, consumers, payers, media, State and Federal agencies, surveillance and data agencies, research and academic institutions, and others to become members of a new or existing State/Tribe/Territory-wide comprehensive cancer control coalition or partnership. Performance will be measured by the extent to which the program has used coalitions and partners, both within (such as Breast and Cervical Cancer Early Detection Programs and the State or Territorial Central Cancer Registry) and outside of the organization, in the implementation of the comprehensive cancer control plan and sustained these partnerships as ongoing entities by such activities as:

G.3.a.(2)(c)[1] Organizing and using workgroup(s).

G.3.a.(2)(c)[2] Establishing written responsibilities (*e.g.*, in a mission statement or scope of work).

G.3.a.(2)(c)[3] Establishing written inter-organizational linkages (*e.g.*, a Memorandum of Understanding).

G.3.a.(2)(c)[4] Conducting formal assessment of members' skills and needs for education or training.

G.3.a.(2)(c)[5] Conducting assessments of partnership member satisfaction.

G.3.a.(2)(c)[6] Coordinating and working with partners to implement activities.

G.3.a.(2)(d) Conduct systematic evaluation of the cancer control prioritization and implementation process and the program. Evaluate progress in meeting goals, process and impact objectives as stated in the work plan and implementation plan. Develop objective/quantitative measures of effectiveness that will demonstrate accomplishment of program goals and objectives and measure intended outcomes. Performance will be measured by the extent to which the program has:

G.3.a.(2)(d)[1] Continuously evaluated and monitored its own process and the outcomes of the NCCCP Plan, its objectives and activities.

G.3.a.(2)(d)[2] Developed and monitored measures of effectiveness for its proposed activities.

G.3.a.(3) Recipient Activities for NCCCP (Optional) Additional Activities in Colorectal, Ovarian, Prostate and Skin Cancer:

Applicants who are submitting requests in response to this program announcement for NCCCP Implementation Programs have the option to submit additional proposal(s) to pursue activities described in their Comprehensive Cancer Control Plan addressing colorectal, ovarian, prostate and skin cancers. Up to four proposals may be submitted, but only one proposal in any cancer area. Activities proposed should be evidence-based; developed through coordination and collaboration between governmental and non-governmental partners; and reflect interventions that have been shown to be effective in similar settings.

These requests may include the following types of activities relating to colorectal, ovarian, prostate and skin cancers:

G.3.a.(3)(a) Establishment or expansion of campaigns, strategies and community-based initiatives to educate priority populations about prevention and/or control of these selected cancers.

G.3.a.(3)(b) Provider education programs about these cancers or their associated risk factors.

G.3.a.(3)(c) Implementation of policy mandates and environmental changes important in the prevention and control of these cancers.

Performance will be measured by the extent to which the program completes proposed activities. If all activities are not completed as planned, detail should be given on barriers encountered.

G.3.b. CDC Activities

G.3.b.(1) Assist with the exchange of information and collaboration among recipients.

G.3.b.(2) Provide to recipients relevant, state-of-the-art, research findings and public health recommendations related to comprehensive cancer control.

G.3.b.(3) Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.

G.3.b.(4) Assist with identifying and developing national cancer prevention and control campaigns and materials that can be integrated into comprehensive cancer control programs.

G.4. Content

Use the information in Sections G.3. Program Requirements for NCCCP, G.4. Content, G.5. Other NCCCP Requirements, and G.6. Evaluation Criteria to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan.

Applications should not exceed 30 double-spaced pages including budget and justification. Applicants should also submit appendices (including curriculum vitae, job descriptions, organizational charts, and any other supporting documentation), which should not exceed an additional 20 pages (20 page limit excludes State/Tribe/Territory cancer plan, if applicable).

G.4.a. NCCCP Application Outline

Please provide the following information as outlined below.

G.4.a.(1) Executive Summary:

The applicant should provide a clear, concise 1–2 page written summary to include:

G.4.a.(1)(a) Need for comprehensive cancer control planning activities or implementation activities.

G.4.a.(1)(b) Identification of the major activities proposed to develop or implement a comprehensive cancer prevention and control plan.

G.4.a.(1)(c) Requested amount of Federal funding.

G.4.a.(1)(d) Applicant's capability to conduct the comprehensive cancer control activities.

G.4.a.(2) Background and Need:

The applicant should describe:

G.4.a.(2)(a) The cancer disease burden for the State/Tribe/Territory, including the most recently available age-adjusted, overall cancer incidence and mortality rates by age, gender, and racial and ethnic groups. Cite the source for and time period covered by these data. Also describe the estimated State/Tribe/Territory cancer incidence and mortality rates for 2002.

G.4.a.(2)(b) Relevant experiences in development and implementation of cancer prevention and control programs.

G.4.a.(2)(c) Relevant experiences in coordination and collaboration between and among existing programs.

G.4.a.(2)(d) Existing initiatives, capacity, and infrastructure (*e.g.*, coalitions/partnerships; surveillance activities and systems; evaluation activities; information, media and health communications; education and outreach strategies) within which comprehensive cancer control will occur.

G.4.a.(2)(e) Description of the need for comprehensive cancer control funding to enhance existing efforts.

G.4.a.(3) Collaborative Partnerships and Community Involvement:

The applicant should include:

G.4.a.(3)(a) A description of the proposed or existing broad-based State/Tribe/Territory-wide partnership that will advise and support the program in planning and/or implementing comprehensive cancer control activities, including a plan for identifying new/additional key members, their charge and proposed roles/responsibilities.

G.4.a.(3)(b) A description of evidence of a broad and diverse level of support for and commitment to comprehensive cancer control planning or implementation (*e.g.*, legislation supporting cancer prevention and control, other sources of funding for comprehensive cancer control, dedicated comprehensive cancer control staff); letters of support (in a separate tabbed section of the application) that indicate the nature and extent of existing or planned collaborative support.

G.4.a.(3)(c) A plan for collaborating with partners on national campaigns or education efforts.

G.4.a.(4) Management Plan:

The applicant should:

G.4.a.(4)(a) Submit a management plan that includes a description of proposed management structure that addresses the use of qualified and diverse technical, program, administrative staff (including in-kind staff), organizational relationships (in the appendices provide a copy of the organizational chart indicating the placement of the proposed or existing program in a department or agency), internal and external communication systems, and a system for sound fiscal management. Minimal staffing should include a program coordinator. Applicant should clearly indicate who is responsible for ensuring that a comprehensive plan is developed and/or implemented.

G.4.a.(4)(b) Provide a description of the proposed or existing linkages within the State/Tribe/Territory health department (*e.g.*, across risk factors, categorically funded programs, disciplines) that will support integration and coordination within the agency. The description of the management structure should include discussion of the integration and coordination of risk factors and cancer-related programs both within and outside of the funded organization and the integration of these programs in the planning or implementation effort. It is important that the management plan address how coordination and cooperation among existing categorical program efforts will be facilitated, while allowing each program to maintain individual integrity and identity.

G.4.a.(4)(c) Provide a description of the proposed core planning or implementation team. The core team is traditionally made up of individuals both within and outside of the health agency that are committed to the development and implementation of the comprehensive cancer plan.

G.4.a.(4)(d) Provide (in the appendices) curriculum vitae and job descriptions of key staff to be partially or fully funded through this announcement, as well as any staff (who will devote 50 percent or more of their time to this program) to be provided through in-kind support.

G.4.a.(5) Workplan:

The applicant should provide a detailed work plan that describes how comprehensive cancer control activities will be conducted. It should include the following:

G.4.a.(5)(a) Goals and objectives for Year 01.

G.4.a.(5)(b) Activities planned to achieve objectives.

G.4.a.(5)(c) Data that will be used to assess program activities.

G.4.a.(5)(d) Time line for assessing progress.

G.4.a.(5)(e) The person or persons responsible for activities.

G.4.a.(5)(f) Overall measures of effectiveness.

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the workplan, as an element of evaluation.

Grantees may use the attached workplan template to present this information (Attachment B—Workplan Template in the appendices). Electronic copies of the template will be provided when requested from the Program Consultant listed in Section L ''Where to Obtain Additional Information''—NCCCP Section.

G.4.a.(6) Comprehensive Cancer Control Plan: (for Implementation Applicants only)

The applicant should:

G.4.a.(6)(a) Submit a copy of the existing up-to-date State/Tribe/Territory-wide comprehensive cancer control plan, or an up-to-date draft of a comprehensive cancer control plan. A comprehensive cancer control plan should:

G.4.a.(6)(a)[1] Include an assessment of the cancer burden across the State/Tribe/Territory using population-based data.

G.4.a.(6)(a)[2] Include short-term and long-term goals, measurable objectives, proposed strategies to address the cancer burden and evaluation plans.

G.4.a.(6)(a)[3] Be created with diverse partners, inside and outside of the State/Tribe/Territory health department, that are committed to achieving the goals and objectives of the plan.

G.4.a.(6)(a)[4] Address cancer prevention, early detection, treatment, rehabilitation, palliation and quality of life.

G.4.a.(6)(b) Describe the process by which the plan was developed. If the plan is in draft format, describe the process for ensuring readiness for implementation by November 1, 2002. Include a description of the participating organizations' involvement in the development of the plan. Clearly describe a mechanism to review, evaluate, and update the plan to meet changing needs.

G.4.a.(6)(c) Describe who will be responsible for maintaining the comprehensive cancer control plan, assuring that the partnership/coalition is involved throughout the process, and that comprehensive cancer control efforts proceed according to the State/Tribe/Territory's plan. Describe how the cancer control plan will be implemented, including the process for determining priorities to be addressed in implementing the comprehensive cancer control plan, the process for assuring that these decisions are data-based or evidence-based and grounded in sound science, and the role of the coalition and/or collaborators in plan implementation. Describe existing programs funded by other sources that will be critical to the successful coordination and integration of the proposed comprehensive cancer control effort.

G.4.a.(7) Itemized Budget and Justification A detailed budget with supporting justification must be provided and should be related to objectives that are stated in the applicant's workplan.

Applicants should note the following budget-related issues:

G.4.a.(7)(a) Indirect Costs:

If indirect costs are requested, it will be necessary to include a copy of your organization's current negotiated Federal Indirect Cost Rate Agreement or a Cost Allocation Plan for those grantees under such a plan.

G.4.a.(7)(b) Travel:

Participation in CDC sponsored training workshops and meetings is

essential to the effective implementation of the NCPCP. Travel for program implementation should be justified and related to implementation activities.

Participation or attendance in non-CDC sponsored professional meetings (e.g., ACS, NCI, APHA, other) may be requested but must be directly relevant to workplan activities. Participation may include the presentation of papers, poster sessions or exhibits on the project. Specific requests should be submitted with appropriate justification.

The annual travel budget should include:

G.4.a.(7)(b)[1] Travel funds for two staff members to participate in two meetings of NCCCP staff in Atlanta, GA for 2–3 days and one meeting of NCCCP staff at a regional location for 2–3 days.

G.4.a.(7)(b)[2] Funds for two staff members to make two, 2–3 day trips to Atlanta for CDC-sponsored workshops/meetings, such as the National Conference on Chronic Disease Prevention and Control and the CDC Cancer Conference.

G.4.b. NCCCP Optional Additional Funding Requests

Applicants requesting implementation funds through this Program Announcement have the option to submit requests to support colorectal, ovarian, prostate, and skin cancer activities described in their cancer plan. Up to four separate proposals for additional funding (one per specific cancer area) may be submitted. Each proposal is limited to five pages plus a separate budget and narrative justification.

Provide separate proposal(s) for activities described in the Comprehensive Cancer Control Plan addressing colorectal, ovarian, prostate or skin cancers (up to four proposals may be submitted, but only one in each of the four selected cancer areas). For each proposal, the following information should be submitted:

G.4.b.(a) Relation to Comprehensive Cancer Control Plan Priority:

Activities proposed for funding should relate directly to components of the Comprehensive Cancer Control Plan to be implemented.

G.4.b.(b) Evidence-based Activities:

Proposed activities should be evidence-based; relate to both disease burden and demonstrated need and deficiencies; and have been shown to be effective in similar settings.

G.4.b.(c) Organizational Capability:

The cancer program should document experience, capacity, and infrastructure to implement proposed activities.

G.4.b.(d) Evaluation:

A proposed plan for evaluating progress toward meeting objectives and assessing impact should be included; objectives should be specific, measurable, action-oriented, realistic, and time-phased.

G.4.b.(e) Itemized Budget and Justification See Section G.4.a.(7) above for guidance in developing this section of the Application.

G.5. Other Requirements

G.5.a. Progress Report (1 of 2)

In addition to the general guidance provided in Section J—''Other Requirements'', the first of the two required progress reports should include a description of:

G.5.a.(1) Activities accomplished in the current fiscal year, presented in relation to what has been proposed and measured by measures of effectiveness included in workplan (may submit either in narrative or work plan or chart format.)

G.5.a.(2) Progress in successfully accomplishing recipient activities, as measured by performance measures outlined in this program announcement.

G.5.a.(3) An activity that demonstrates the impact of the comprehensive cancer control program.

G.5.a.(4) The technical assistance needs of the cooperative agreement recipient.

G.5.b. Moving from a Planning Program to an Implementation Program within the five-year Project Period

For the NCCCP component, the first of the two required progress reports may be used as evidence of a NCCCP Planning Program's attainment of goals and objectives and the program's readiness to move to an Implementation Program award should funds be available. In future years, Planning Program grantees wishing to apply for an Implementation Program, should submit an application that:

G.5.b.(1) Demonstrates success in meeting Planning Program Performance Measures.

G.5.b.(2) Fulfills the requirements of the Implementation Program.

G.5.b.(3) References ''Application Content'' and ''Recipient Activities'' section of this program announcement including an itemized budget and justification.

Implementation Program applications will be reviewed by CDC staff utilizing a CDC Internal Review process. Applications can be submitted in fiscal year 2003, 2004, 2005, or 2006. Applications must be submitted (post marked) by February 28 of the fiscal year in which the applicant wishes to be considered for Implementation funding.

Funding decisions may be made on the basis of satisfactory progress on the Performance Measures noted for each component as evidenced by required reports (semi-annual report), application score, and the availability of funds. Performance measures are listed after each Recipient Activity.

G.6. Evaluation Criteria

G.6.a. Evaluation Criteria for NCCCP and NCCCP Optional Additional Funding

G.6.a.(1) Planning Programs:

G.6.a.(1)(a) Background and Need (10 points)

The extent of need based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, cancer program experience, existing capacity, and infrastructure.

G.6.a.(1)(b) Collaborative Partnerships and Community Involvement (20 points)

The extent to which the evidence presented demonstrates the breadth and appropriateness of the current or proposed broad-based State/Tribe/Territory-wide coalition/partnership to advise and support comprehensive cancer control planning activities.

G.6.a.(1)(c) Management Plan (30 points)

The feasibility and clarity of the proposed management plan. The extent to which this plan addresses the use of qualified and diverse staff, describes proposed or existing linkages within the State/Tribe/Territory health department to support integration and coordination, and describes a proposed core planning team committed to the program.

G.6.a.(1)(d) Workplan (40 points)

The extent to which the workplan is feasible, appropriate, reasonable and provides a clear description of an evaluation component.

G.6.a.(1)(e) Budget with Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and the applicant's work plan.

G.6.a.(2) Implementation Programs:

G.6.a.(2)(a) Background and Need (10 points)

The extent of need based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, cancer program experience, existing capacity, and infrastructure.

G.6.a.(2)(b) Collaborative Partnerships and Community Involvement (15 points)

The extent to which the evidence presented demonstrates the breadth and appropriateness of the current or

proposed broad-based State/Tribe/Territory-wide coalition/partnership to advise and support comprehensive cancer control implementation activities.

G.6.a.(2)(c) Management Plan (20 points)

The feasibility and clarity of the proposed management plan. The extent to which this plan addresses the use of qualified and diverse staff, describes proposed or existing linkages within the State/Tribe/Territory health department to support integration and coordination, and describes a proposed core implementation team committed to the program.

G.6.a.(2)(d) Workplan (35 points)

The extent to which the workplan is feasible, appropriate, reasonable and provides a clear description of an evaluation component.

G.6.a.(2)(e) Comprehensive Cancer Control Plan (20 points)

The quality of the comprehensive cancer control plan in terms of an assessment of the cancer burden across the State/Tribe/Territory; inclusion of short-term and long-term goals, measurable objectives, and proposed strategies to address both the cancer burden and evaluation plans; inclusion of diverse partners in development and implementation of the cancer plan; and description addressing the full range of cancer prevention and control activities (from prevention to quality of life).

Applications will also be evaluated on the extent to which the evidence presented indicates that a broad range of partners and stakeholders will be included in reviewing and updating the plan as appropriate; mechanisms to review, evaluate and update the plan to meet evolving needs, and personnel who will be responsible for maintaining the plan, and describes how the cancer control plan will be implemented, including a description of existing programs that will be critical to the successful coordination and integration of the proposed comprehensive cancer control effort.

G.6.a.(2)(f) Budget with Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and the applicant's implementation plan.

G.6.a.(3) (Optional) Additional Activities in Colorectal, Ovarian, Prostate, and Skin Cancer.

Optional proposals for additional funding will be reviewed by an Objective Review Panel.

The following are criteria to be used for review of additional proposals:

G.6.a.(3)(a) Consistent with Priority Area Specified in the Comprehensive Cancer Control Plan (30 points) The extent to which activities proposed in the workplan relate to components of the Comprehensive Cancer Control Plan to be implemented.

G.6.a.(3)(b) Appropriate Activities (30 points)

The extent to which proposed activities are evidence-based; relate to disease burden and demonstrated need; and have been shown to have been effective in similar settings.

G.6.a.(3)(c) Organizational Capability (10 points)

The extent to which the cancer program has experience, capacity and infrastructure to implement proposed activities.

G.6.a.(3)(d) Evaluation (30 points)

The extent to which the proposed plan for evaluating progress toward meeting objectives and assessing impact appears reasonable and feasible; and the degree to which objectives are specific, measurable, action-oriented, realistic and time-phased.

G.6.a.(3)(e) Budget with Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and the applicant's work plan.

G.6.a.(3)(f) Human Subjects Protection (not scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Specific Guidance for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP)

H.1. Eligible Applicants

Eligible tribal organizations in this category are encouraged to collaborate with other tribal organizations in geographic or cultural proximity to submit one application. Such collaboration will help to maximize the number of women potentially eligible for services under this program announcement.

H.2. Availability of Funds

Approximately $83,000,000 is available to fund 51 existing NBCCEDP grantees under Program Announcement Numbers 99052 and 01038. It is expected that the average award will be $1,570,000, ranging from $117,000 to $6,700,000.

In addition, approximately $57,000,000 is available in FY 2002 to fund 20 to 22 new NBCCEDP recipients. This includes current recipients under Program Announcements Numbers 97018 and 96023. It is expected that the average award will be $2,680,000, ranging from $200,000 to $7,940,000. Requests for these funds will be competitive.

H.2.a. Direct Assistance

No new direct assistance funds will be awarded in lieu of financial assistance to successful NBCCEDP component recipients.

H.2.b. Use of Funds

H.2.b.(1) 60/40 Requirement: Not less than 60 percent of cooperative agreement funds must be spent for screening, tracking, follow-up and the provision of appropriate individually provided support services. Cooperative agreement funds supporting public education and outreach, professional education, quality assurance and improvement, surveillance and program evaluation, partnerships, and management may not exceed 40 percent of the approved budget [Section 1503(a)(1) and (4) of the PHS Act, as amended]. Further information about the 60/40 distribution is provided in the NBCCEDP Policies and Procedure Manual, Section II, beginning on page 10. The NBCCEDP Policies and Procedures Manual can be accessed through the Internet at *http://www.cdc.gov/cancer/nbccedp* or by contacting the program technical assistant contact listed in Section J, Where to Obtain Additional Information.

H.2.b.(2) Inpatient Hospital Services: Cooperative agreement funds must not be spent to provide inpatient hospital or treatment services [Section 1504(g) of the PHS Act, as amended]. Refer to the NBCCEDP Policies and Procedures Manual, Section IV, ''Reimbursement Policies for Screening and Diagnostic Services,'' beginning on page 1, for additional information about allowable screening and diagnostic services.

H.2.b.(3) Administrative Expenses: Not more than 10 percent of the total funds awarded may be spent annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs [Section 1504(f) of the PHS Act, as amended]. Administrative expenses comprise a portion of the 40 percent component of the budget.

H.2.c. Recipient Financial Participation

H.2.c.(1) Matching Requirement Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502(a) and (b)(1), (2), and (3) of the PHS Act, as amended, requires

matching funds from non-Federal sources in an amount not less than one dollar for every three dollars of Federal funds awarded under this program. However, Title 48 of the U.S. Code 1469a(d) requires DHHS to waive matching fund requirements for Guam, U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands up to $200,000.

Matching funds may be cash, in-kind or donated services or equipment. Contributions may be made directly or through donations from public or private entities. Public Law 93–638 authorizes tribal organizations contracting under the authority of Title I to use funds received under the Indian Self-Determination Act as matching funds.

Applicants may also designate as State/Tribe/Territory matching funds any non-Federal amounts spent pursuant to Title XIX of the Social Security Act for the screening, tracking, follow-up and case management of women for breast and cervical cancers.

Matching funds may not include: (1) Payment for treatment services or the donation of treatment services; (2) services assisted or subsidized by the Federal government; or (3) the indirect or overhead costs of an organization.

All costs used to satisfy the matching requirements must be documented by the applicant and will be subject to audit. Specific rules and regulations governing the matching fund requirement are included in the PHS Grants Policy Statement, Section 6. Matching funds are not subject to the 60/40 requirement described above in H.2.b(1). For further information about the matching fund requirement, see the NBCCEDP Policies and Procedures Manual, Section II, pages 19–21 and page 35.

H.2.c.(2) Maintenance of Effort: In determining the matching funds for the NBCCEDP contribution, applicants should calculate the average amount of non-Federal contributions toward breast and cervical cancer programs and activities for the two year period preceding the first Federal fiscal year of funding for NBCCEDP. This amount is referred to as Maintenance of Effort (MOE). Only those non-Federal contributions in excess of the MOE amount may be considered as matching funds. Supplanting, or replacing, existing program efforts currently paid with Federal or non-Federal sources is not allowable.

H.2.d. Funding Preference

Funding preference may be given to applications from currently funded recipients. Preference may also be given to tribal organizations that collaborate with other tribal organizations in geographic or cultural proximity for the purpose of maximizing the number of women potentially eligible for services under this Program Announcement.

H.2.e. Funding Consideration

Funding Consideration for the NBCCEDP component may be based on:

H.2.e.(1) Total amount of funding available to support the NBCCEDP. See H.2. ''Availability of Funds'' for this information.

H.2.e.(2) The proportion of funds awarded for NBCCEDP activities that were spent during the budget period, if such funds were received in the past.

H.2.e.(3) The appropriate and timely use of unobligated funds from previous years, if such funds were received in the past.

H.3. Program Requirements for NBCCEDP

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under H.3.a. (Recipient Activities) and CDC will be responsible for the activities listed under H.3.b. (CDC Activities).

H.3.a. Recipient Activities

H.3.a.(1) Provide breast and cervical cancer screening services in a timely and appropriate manner to a reasonable number of women (negotiated with CDC based upon eligible populations and funds to support clinical services) who are under-served, low-income and uninsured, with a focus on women from racial and ethnic minority populations. Performance will be measured by the extent to which the number of eligible women served and their demographic characteristics is consistent with projections.

H.3.a.(2) Refer women with abnormal screening results for diagnostic and treatment services in a timely and appropriate manner. Performance will be measured by the extent to which data are complete when submitted to CDC and the timeliness of diagnostic and treatment services meets the 60 day standard.

H.3.a.(3) Implement a breast and cervical cancer early detection program that meets or exceeds expectations in each of the NBCCEDP components. Descriptions of the NBCCEDP components, including each component's minimum core expectations, can be accessed through the Internet at *http://www.cdc.gov/cancer/nbccedp* or the technical assistance contact listed in Section J, ''Where to Obtain Additional Information''. A summary of the NBCCEDP Program Components and their minimum core elements can be found as Attachment C—NBCCEDP Program Component in the appendices. Performance will be measured by the extent to which the program meets or exceeds the core elements of each of the program components.

H.3.a.(4) Review progress in meeting objectives and performance measures with CDC staff during regular conference calls and/or site visits. Evaluate all component activities routinely and use results to improve program planning and implementation. Performance will be measured by the extent to which there is an evaluation plan for each component and evaluation results are used to improve the program.

H.3.a.(5) Attend CDC-sponsored meetings and training opportunities.

H.3.b. CDC Activities

H.3.b.(1) Provide ongoing guidance, technical assistance and consultation to Grantees to support their planning, implementation and evaluation of each NBCCEDP program component. Technical assistance from CDC may address:

H.3.b.(1)(a) Practical application of Public Law 101–354, including amendments to the law.

H.3.b.(1)(b) Design and implementation of program components.

H.3.b.(1)(c) Interpretation of current scientific literature related to the early detection of breast and cervical cancer.

H.3.b.(1)(d) Interpretation of program outcome, screening and surveillance data.

H.3.b.(1)(e) Overall operational planning and program management.

H.3.b.(2) Provide relevant public health practice recommendations and occasions for exchange of information and collaboration among recipients.

H.4. Content

Use the information in Sections H.3. Program Requirements for NBCCEDP, H.4. Content, and H.5 Evaluation Criteria to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan.

Applications should not exceed 65 double-spaced pages including budget and justification. Appendices (including curriculum vitae, job descriptions, organizational charts, and any other supporting documentation) are not counted in the 65-page limit.

H.4.a. NBCCEDP Application Outline

Please provide the following information as outlined below.

H.4.a.(1) Capability for Program Implementation (Up to 10 pages)

Applicants should address their capability to implement proposed activities.

Applicants not currently funded should describe experience with other screening programs and their results. Describe relationships with key partners who can recruit clients, affect systems, deliver services and support the screening program.

H.4.a.(2) Organizational Support (up to 5 pages)

The applicant should provide the following information:

H.4.a.(2)(a) A plan for program management, including an organizational chart. Describe those positions which have oversight responsibility. Address leadership and administrative plans. Discuss strategies for ensuring appropriate communication among key staff on the status of program implementation, maintenance, and related issues.

H.4.a.(2)(b) If the applicant has a cancer registry that has achieved NAACCR certification, a plan or description of the current process to link data elements (*e.g.*, stage, tumor size, date of treatment initiation) related to cancers diagnosed through the program with the comparable information in the cancer registry in order to verify or correct data. For more information about Cancer Registries see *http://www.cdc.gov/cancer/npcr*, *http://www-seer.ims.nci.nih.gov*, and for NAACCR certification see *http://www.NAACCR.org*.

H.4.a.(2)(c) If the applicant currently has or is applying for comprehensive cancer control planning or implementation funds, describe the ways in which the breast and cervical cancer screening program will contribute to and benefit from activities related to comprehensive cancer control planning or implementation.

H.4.a.(3) Identification of Eligible and Priority Populations (Up to 2 pages)

The applicant should describe:

H.4.a.(3)(a) The number of women who are at or below 250 percent of the Federal poverty level and uninsured, by age (18–39; 40–49; 50–64) and racial/ethnic distribution (use 2000 Census data, unless it is not available). Note that tribes are encouraged to collaborate with other tribes in geographic or cultural proximity in order to maximize the number of women potentially eligible for services under this program announcement.

H.4.a.(3)(b) The priority populations for screening, including supporting data and/or justification for their selection. Describe the specific barriers to screening services that impede women in the priority populations from participating in breast and cervical cancer screening and follow-up services. Broadly, priority populations can be described as women who are racial, ethnic and/or cultural minorities, such as American Indians, Alaska Natives, African-Americans, Hispanics, Asian and Pacific Islanders, lesbians, women with disabilities, and women who live in geographically or culturally isolated communities in urban and rural areas. The term priority populations, as defined above, will be used throughout this document.

H.4.a.(3)(c) Regardless of the geographic area, priority for breast cancer screening should be given to women age 50 to 64 years of age. Priority for cervical cancer screening should be given to rarely or never screened women, age 18 to 64.

H.4.a.(4) Workplan (Up to 15 pages)

For each program component, a detailed workplan and timeline including evaluation activities to be accomplished must be submitted for the period September 30, 2002 through June 29, 2003. The minimum core expectations for each program component should be addressed in the workplan. For descriptions of the NBCCEDP components, see Attachment C—''NBCCEDP Program Components'' in the appendices. The workplan should include the following:

H.4.a.(4)(a) Measurable goals and objectives.

H.4.a.(4)(b) Activities planned to achieve objectives.

H.4.a.(4)(c) Data that will be used to assess program activities.

H.4.a.(4)(d) Timeline for assessing progress.

H.4.a.(4)(e) Person or persons responsible for activities.

H.4.a.(4)(f) Overall measures of success/effectiveness.

Applicants are encouraged to use the NBCCEDP workplan template available through the Internet at *http://www.cdc.gov/cancer/nbccedp/training/index.htm*.

Applicants should include an attachment to the workplan with realistic screening projections for fiscal year 2002–2003 that are based on past screening performance. Applicants who are not currently funded by CDC for breast and cervical cancer screening should present data about existing programs, if applicable. Screening projections should include the number of women to be screened by the program by age, race and ethnicity. If women with other characteristics have been selected as priority populations, please estimate the number of these women to be served. Applicants should include a projection of the number of rarely and never screened women to receive a cervical cancer screening examination.

Applicants are encouraged to present screening projections using the Screening Projections Matrix, Attachment D—''Screening Projections Matrix'' in the appendices.

The Breast and Cervical Cancer Treatment and Prevention Act of 2000 (Public Law 106–354) amends Title XIX of the Social Security Act to give States the option to provide Medicaid coverage to women who have been screened under the NBCCEDP and found to have breast or cervical precancerous conditions or cancer. If the applicant has submitted a request to the Center for Medicare and Medicaid Services (CMS) under this law and received approval, complete Attachment E—''The Breast and Cervical Cancer Prevention and Treatment Act Form'' in the appendices. Additional information about this law can be obtained from the following web site: *http://www.cdc.gov/cancer/nbccedp*.

H.4.a.(5) Itemized Budget and Justification (Up to 10 pages)

A detailed budget with supporting justification must be provided and should be related to objectives that are stated in the applicant's workplan.

Applicants should note the following budget-related issues:

H.4.a.(5)(a) Travel:

Participation in CDC sponsored training workshops and meetings is essential to the effective implementation of the NCPCP. Travel for program implementation should be justified and related to implementation activities.

Participation or attendance in non-CDC sponsored professional meetings (*e.g.*, ACS, NCI, APHA, other) may be requested but must be directly relevant to workplan activities. Participation may include the presentation of papers, poster sessions or exhibits on the project. Specific requests should be submitted with appropriate justification.

The annual travel budget should include:

H.4.a.(5)(a)[1] The Program Director or Coordinator to travel to Atlanta, GA to participate in two business meetings of Program Directors (2–3 days).

H.4.a.(5)(a)[2] The Data Manager and one other person to Atlanta, GA to participate in the Data Manager's meeting (2–3 days).

H.4.a.(5)(a)[3] 3–5 persons to attend up to two regional training opportunities.

H.4.a.(5)(a)[4] 3–5 persons to Atlanta, GA, as invited by CDC, to report program implementation progress (''reverse site visit'') and for

consultation/technical assistance or to participate on national work groups/committees (two days).

The following additional guidance relates to the NBCCEDP portion only of this program announcement.

Indicate the 60/40 distribution required by presenting the budget in two columns, one containing the 60 percent allowable items and the other containing the 40 percent allowable items.

A sample 60/40 budget breakdown can be found in the NBCCEDP Policies and Procedures Manual, Section II, page 38. For further information about the 60/40 requirement, please refer to the NBCCEDP Policies and Procedures Manual, Section II, page 10.

The applicant should submit a completed Screening and Diagnostic Worksheet (Attachment F—''Screening and Diagnostic Worksheet'' in the appendices) which is used to estimate the amount of funding needed to reimburse providers for allowable clinical services provided to eligible women served in your program. Further information about the Screening and Diagnostic Worksheet is provided in the NBCCEDP Policies and Procedures Manual, Section IV, pages 21–25. An electronic version of the Screening and Diagnostic Worksheet, an EXCEL spreadsheet, may be obtained through the program technical assistance contact listed in Section L. ''Where to Obtain Additional Information.''

No new direct assistance funds will be awarded in lieu of financial assistance to successful NBCCEDP component applicants.

H.4.a.(6) Source Data for Matching Requirement (up to 1 page)

H.4.a.(6)(a) Provide a detailed description of the sources of non-Federal matching funds by name and the estimated amounts from each for the forthcoming fiscal year. Applicants are encouraged to use the Sources and Projections of Matching Funds worksheet (See Attachment G—''Sources and Projections of Matching Funds Worksheet'' in the appendices). The applicant should document the procedures for determining the value of non-cash matching funds. Describe the procedures for documenting the actual match received. Further information about the Matching Funds Requirement can be found in the NBCCEDP Policies and Procedures Manual, Section II, pages 19–21 and page 35.

H.4.a.(6)(b) Previously funded applicants should provide their Maintenance of Effort amount. Applicants not currently funded should detail the average amount of non-Federal dollars spent by the applicant for breast and cervical cancer programs and activities for the two year period preceding the first Federal fiscal year of NBCCEDP funding.

H.4.a.(7) Letters of Commitment (Up to 10 pages)

Applicants should include letters of commitment (dated within the last three months) from key partners, participants, and community leaders that detail their participation in and support of the proposed program. If the applicant is a Tribe, also include either of the following documentation, as appropriate: 1) A signed and dated tribal resolution supporting the application from the Indian Tribe served by the project. If the applicant includes more than one Indian Tribe, resolutions from all Tribes to be served must be included; or 2) A letter of support for the application from the Board of Directors of an Urban Indian organization(s) or Indian Health organization(s), signed by the Board Chairman.

H.4.a.(8) Compliance with Program Requirements:

Requirements and Activities of Public Law 101–354 and related Amendments require that funds may not be awarded under this program unless the State, Tribe or Territory agrees that:

H.4.a.(8)(a) Funds will not be spent to make payment for any item or service that will be paid or can reasonably be expected to be paid by:

H.4.a.(8)(a)[1] Any State compensation program, insurance policy, or Federal or State health benefits program.

H.4.a.(8)(a)[2] An entity that provides health services on a prepaid basis. [Section 1504(d)(1) and (2) of the PHS Act, as amended]

H.4.a.(8)(b) If charges are to be imposed on clients for the provision of services or program activities, such fees/charges for allowable screening and diagnostic evaluation will be:

H.4.a.(8)(b)[1] Assessed according to a schedule of fees made available to the public. [Section 1504(b)(1) of the PHS Act, amended]

H.4.a.(8)(b)[2] Adjusted to reflect the income of the woman involved. [Section 1504(b)(2) of the PHS Act, as amended]

H.4.a.(8)(b)[3] Totally waived for any woman with an income of less than 100 percent of the Federal poverty line. [Section 1504(b)(3) of the PHS Act, as amended]

H.4.a.(8)(c) The schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program administered by the Center for Medicare and Medicaid Services, formerly Health Care Financing Administration (HCFA). Fee/charge schedules should be developed in accordance with guidelines described in the interim final rule (42 CFR Parts 405 and 534) which implements Section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) which provides limited coverage for screening mammography services.

H.4.a.(8)(d) It will assure, in accordance with the applicable law, the quality of screening procedures provided.

H.4.a.(8)(d)[1] All facilities conducting mammography screening procedures funded by the Program must be MQSA certified (Mammography Quality Standards Act of 1992). [Section 1503(c) of the PHS Act, as amended] Additional information about quality assurance is included in the NBCCEDP Policies and Procedures Manual, Section II, page 14.

H.4.a.(8)(d)[2] All facilities conducting cervical screening procedures funded by the Program must be CLIA certified (Clinical Laboratory Improvement Amendments of 1988). Pathologists participating in the program must record their findings using the Bethesda System. [Section 1503(c) of the PHS Act, as amended] Additional information about quality assurance is included in the NBCCEDP Policies and Procedures Manual, Section II, page 14.

H.4.a.(8)(e) Screening and re-screening procedures are available for both breast and cervical cancers and include a clinical breast exam, mammography, pelvic exam and Pap test. [Section 1503(a)(2)(A) and (B).]

H.4.a.(8)(f) If a new or improved, and superior, screening procedure becomes widely available and is used, this superior procedure will be utilized in the program [Section 1503(b) of the PHS Act, as amended].

H.4.a.(8)(g) Women served under the NBCCEDP are those with incomes at or below 250 percent of Federal poverty guidelines, who lack insurance coverage for these services. The official poverty line is established by the Director of the Office of Management and Budget (OMB) and revised by the Secretary of the Department of Health and Human Services (DHHS) in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1991 [Section 1504(a) of the PHS Act, as amended]. Policies related to eligibility for screening are detailed in the NBCCEDP Policies and Procedures Manual, Section IV.

H.4.a.(8)(h) Women screened in the Program will receive appropriate referrals for diagnostic services and, to the extent practicable, appropriate, affordable and timely diagnostic and

treatment services. [Section 1501(a)(2) of the PHS Act, as amended]

H.4.a.(8)(i) Breast and cervical cancer screening services are established throughout the State, Tribe, or Territory [Section 1504(c)(1) of the PHS Act, as amended]. Funds may not be awarded under this announcement unless the State/Tribe/Territory involved agrees that services and activities will be made available throughout the State/Tribe/Territory, including availability to members of any Indian Tribe or tribal organization (as such terms are defined in Section 4 of the Indian Self-Determination and Education Assistance Act). CDC may waive [Section 1504(c)(2) of the PHS Act, as amended] this requirement if it is determined that compliance by the State/Tribe/Territory would result in an inefficient allocation of resources with respect to carrying out a breast and cervical cancer early detection program [as described in Section 1501(a)]. A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

H.4.a.(8)(j) The amount paid by a State/Tribe/Territory for a screening procedure will not exceed the amount that would be paid under part B of Title XVIII of the Social Security Act (Medicare). [Section 1501(b)(3) of the PHS Act, as amended]

H.4.a.(8)(k) Funds will be used in a cost-effective manner.

Applicants should include a statement that indicates that they have read and understand that they will be held accountable for items 8a–8k, and that they will maintain documentation that would provide proof of compliance in the event of a program or fiscal audit.

In addition, programs must provide the CPT codes and schedule of fees for breast and cervical cancer screening and diagnostic services to be used by the program. In States/Tribes/Territories where there are multiple Medicaid rates and a single reimbursement rate is proposed, the applicant must provide justification for approval.

H.5. NBCCEDP Evaluation Criteria

H.5.a. Capability/Commitment (35 points)

The likelihood that the applicant will be successful in implementing the proposed activities as measured by:

H.5.a.(1) For Currently Funded Applicants:

H.5.a.(1)(a) Prior performance, as reflected in the discussion of progress on meeting objectives in the current workplan and achieving the standards of the NBCCEDP program progress indicators.

H.5.a.(1)(b) The extent to which letters of commitment from key partners, participants, and community leaders detail their participation in and support of the proposed program.

H.5.a.(1)(c) If the applicant is a Tribe, the inclusion of a tribal resolution(s) or letter of support from the Board of Directors.

H.5.a.(2) For Applicants Not Currently Funded:

H.5.a.(2)(a) Prior performance, as reflected in the discussion of experience with similar existing programs or audiences.

H.5.a.(2)(b) Extent to which letters of commitment from key partners, participants, and community leaders detail their participation in and support of the proposed program.

H.5.a.(2)(c) If the applicant is a Tribe, the inclusion of a tribal resolution(s) or letter of support from the Board of Directors.

H.5.b. Organizational Support (15 points)

H.5.b.(1) The extent to which the leadership and administrative plans presented can reasonably be expected to facilitate the achievement of program goals and objectives and the resolution of problems.

H.5.b.(2) If the applicant has or is currently applying for comprehensive cancer control planning or implementation funds, the extent to which there is evidence that the breast and cervical cancer screening program's contributions to and benefits from that activity have been discussed.

H.5.b.(3) If the applicant has a Cancer Registry certified by NAACCR, the existence of a data linkage between the NBCCEDP and the cancer registry.

H.5.c. Identification of Eligible and Priority Populations (15 points)

The clarity with which the applicant describes the potentially eligible population, the depth of discussion of the selection and characteristics of the priority populations and the extent to which program activities have been designed to address barriers to care. The reasonableness of the projected population to be served based on past performance and the proposed recruitment and service delivery system.

H.5.d. Workplan (35 points)

The degree of comprehensiveness and quality of the workplan as measured by the quality of the objectives, the feasibility and likelihood of effectiveness of proposed activities to attain the objectives, the appropriateness of their related measures of effectiveness and the reasonableness of the proposed timeline, for each of the NBCCEDP program components.

H.5.e. Budget with Justification (Not Weighted)

The extent to which the proposed budget is reasonable, justified, consistent and in compliance with the program requirements.

H.5.f. Source Data for Matching Requirement (Not Weighted)

The extent to which the applicant describes the sources and amounts of matching funds, the methods for determining the value of non-cash match, the methods for documenting the match, the Maintenance of Effort amount and, in the case of applicants without current funding, the calculation of MOE.

H.5.g. Compliance With Program Requirements (Not Weighted)

A statement is provided indicating the applicant's understanding and acceptance of its accountability for compliance with program requirements.

I. Specific Guidance for the National Program of Cancer Registries (NPCR)

I.1. Eligible Applicants

The NPCR component of this program announcement incorporates two types of eligibility. The first type is Part I—Enhancement. This type of eligibility is defined as a State or territorial health agency or its designee that is requesting funds to support and/or enhance an existing State cancer registry.

The second type of NPCR eligibility is Part II—Planning. This type of eligibility is defined as a State or Territory with a limited or no established State cancer registry that is requesting funds to plan and implement a statewide cancer registry.

Eligible applicants may apply for either Part I (Enhancement) or Part II (Planning) but not both.

I.2. Availability of Funds

Approximately $29,500,000 is available in FY 2002 to fund 49 existing NPCR grantees under Program Announcement 00027. It is expected that the average award will be $649,000, ranging from $48,000 to $2,400,000.

In addition, approximately $500,000 is available in FY 2002 to fund two to four new NPCR recipients. It is expected that the average award will be $165,000, ranging from $75,000 to $250,000.

Based on evidence of meeting or exceeding performance standards of Planning related activities, and availability of funds, recipients of Planning funds do not necessarily need

to complete the full five year project period before competing for Enhancement funds. Unsuccessful applicants for Enhancement funding under this scenario would continue with Planning support and would continue under their original five year project period.

Competition is limited in accordance with the authorizing legislation, the Cancer Registries Amendment Act (Public Law 102–515; Sections 399H–399L of the Public Health Service Act). This legislation was re-authorized as part of the Women's Health Research and Prevention Amendments of 1998 (Public Law 105–340).

States applying under Part I may be eligible to be considered for funds for advanced activities if they meet NPCR minimum standards or criteria for completeness, timeliness, and quality of data. (See Appendix I—National Program of Cancer Registries Program Standards that lists these standards.)

I.2.a. Direct Assistance

Applicants may request Federal personnel, as direct assistance, in lieu of a portion of financial assistance.

Requests for new direct-assistance should include:

I.2.a.(1) Number of assignees requested.

I.2.a.(2) Description of the position and proposed duties.

I.2.a.(3) Ability or inability to hire locally with financial assistance.

I.2.a.(4) Justification for request.

I.2.a.(5) Organizational chart and name of intended supervisor.

I.2.a.(6) Opportunities for training, education, and work experiences for assignees.

I.2.a.(7) Description of assignee's access to computer equipment for communication with CDC (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

I.2.b. Use of Funds

No limitations are placed on the use of funds awarded for this component in addition to those that are referenced as standard guidance in the ''PHS Grants Policy Statement'' (Section 7. Costs Under PHS Grant-Supported Projects/Activities).

I.2.c. Recipient Financial Participation

I.2.c.(1) Matching Requirement (Part I Applicants only)

Recipients of funds under Part I must agree, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or one dollar for every three dollars of Federal funds provided in the grant. [Section 399H(b)(1) of the Public Health Service Act]

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be included in determining the amount of such non-Federal contributions. [Section 399H(b)(2)(A) of the Public Health Service Act]

I.2.c.(2) Maintenance of Effort (Part I & Part II Applicants)

I.2.c.(2)(a) Recipients of funds must agree to make available (directly or through donations from public or private entities) non-Federal contributions equal to the amount expended during the fiscal year preceding the first year of the original NPCR grant award for the collection of data on cancer.

I.2.c.(2)(b) In determining the amount of non-Federal contributions the recipient may include only those contributions that are in excess of the amount of contributions made by the State for collection of data on cancer for the fiscal year preceding the first year of the original NPCR cooperative agreement award. CDC may decrease the amount of non-Federal contributions required if the State can show that the amount will cause them financial hardship. [Section 399H(b)(2)(B)] Details regarding criteria for defining ''financial hardship'' and the process for deciding eligibility are included in the application kit.

I.2.d. Funding Preference

Preference may be given to territorial organizations that collaborate with other Territories in geographic or cultural proximity for the purpose of maximizing the efficiency of registering cancer incidence cases.

I.2.e. Funding Consideration

Funding consideration for the NPCR Part I—Enhancement component may be based on:

I.2.e.(1) The geographic size of the State.

I.2.e.(2) The number of expected incident cases during the funding period.

I.2.e.(3) The extent to which data from the cancer registry meet the minimum NPCR program standards for completeness, timeliness and quality. The NPCR standards by which these data will be evaluated may be found in Attachment I—''National Program of Cancer Registries Program Standards'' in the appendices.

I.2.e.(4) The extent to which the cancer registry has been able to utilize Federal funding, if funding for the NPCR program has been received in the past. Measurement of this criteria will be evaluated each year by using the amount of unobligated funds reported on each recipients' Financial Status Report for the NPCR component of this award. (See Section J.1. ''Technical Reporting Requirements.'') This figure will be subtracted from the amount of the initial award to obtain the dollar amount spent. The amount spent will be divided by the amount of the initial award to obtain the percentage of the award that was spent.

I.2.e.(5) Total amount available to fund NPCR. See Section I.2. ''Availability of Funds'' for specific amount.

I.3. Program Requirements for NPCR

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under I.3.a. (Recipient Activities) and CDC will be responsible for the activities listed under I.3.b. (CDC Activities).

I.3.a. Recipient Activities

I.3.a.(1) Support and enhance (Part I), or plan, implement, and support (Part II) the operation of population-based, statewide cancer registries in order to collect data concerning: each form of invasive cancer with the exception of basal cell and squamous cell carcinoma of the skin and each form of in-situ cancer except for carcinoma in-situ of the cervix uteri.

Note: Reportable diagnoses include VIN III, VAIN III, AIN III, juvenile astrocytoma, pilocytic astrocytoma, piloid astrocytoma. Performance will be measured by the extent to which the program complies with CDC's standards for data completeness and quality (See Attachment I—''National Program of Cancer Registries Program Standards''). Compliance will be determined based on a measurement of data submitted through the NPCR–CSS annual call for data.

Applicants applying for Part I must have a central registry at the State level, continuous and recent data collection efforts, existing core staff, and written central cancer registry operational policies and procedures implemented.

I.3.a.(2) Collect all required data items. A complete draft listing of required and supplementary/recommended data to be collected or derived for invasive and in-situ cancers diagnosed after January 1, 2003, is supplied in the attachment. These requirements will be finalized and

published in Standards for Cancer Registries, Volume II, North American Association of Central Cancer Registries (NAACCR), Spring 2002 (NAACCR record layout version 10).

Performance will be measured by the extent to which:

I.3.a.(2)(a) The information collected or derived on cancer cases includes all data elements currently required by the CDC.

I.3.a.(2)(b) The data codes for all required and recommended data elements are consistent with those currently prescribed by CDC.

The listing of required and supplementary/recommended data items, and requirements for code sets, may be revised during the project period. Every effort will be made to finalize and disseminate revisions for a given diagnosis year no later than April 30th of the previous year.

I.3.a.(3) Develop and/or maintain the capability to import and export data in a standard format specified by CDC, in accordance with Section 399H(c)(2)(D)(iv) of Public Law 102–515. For cases diagnosed during calendar year 2003, NAACCR record layout Version 10 is required. (Some data items required for cases diagnosed on or after January 1, 2003, can only be captured and transmitted using NAACCR record layout Version 10.) The required format for data import and export may be revised during the project period. Performance will be measured by the extent to which the state central registry uses a standardized, CDC-recommended data exchange record layout for the exchange of data.

I.3.a.(4) Perform death certificate linkage and follow-back annually, in accordance with NAACCR standards, to obtain information on date of death, cause of death, and to identify unreported cancer cases. Performance will be measured by the extent to which the program has complied with NAACCR standards. Compliance will be determined based on a measurement of data submitted through the NPCR–CSS annual call for data.

I.3.a.(5) Provide for electronic storage, to the extent possible, of all source records including text and codes. Performance will be measured by the extent to which the program has documented their ability to store required data.

I.3.a.(6) Participate in an independent audit of compliance with NPCR standards as authorized by Section 399H(c)(2)(B)of Public Law 102–515, conducted by a CDC-approved organization/entity. Audit results will be furnished to CDC. Performance will be measured by receipt of audit results at CDC prior to the end of the project period.

I.3.a.(7) Submit cancer data to CDC annually, with the content and format specified by CDC as one of the required reports. (See ''Other Requirements'' Section.) Performance will be measured by the extent to which the program has submitted an analytic data file to CDC with individual records containing all requested data elements.

I.3.a.(8) Establish or enhance, and regularly convene an advisory committee to assist in building consensus, cooperation, and planning for the statewide cancer registry. Representation should include key organizations and individuals such as hospital cancer registrars, clinical-laboratory personnel, pathologists, and clinicians. Applicants should consider drawing the advisory committee from, or maintaining a close relationship with, any existing State cancer control coalition. Performance will be measured by the extent to which the program has documented meetings of the advisory committee in their progress reports.

I.3.a.(9) Produce an annual report of incidence and mortality rates in a timely manner, pursuant to Section 399H (c)(2)(C)of Public Law 102–515. Performance will be measured by the extent to which the program has provided for the publication of an annual report (hardcopy or electronic) which includes at minimum, age-adjusted incidence rates and age-adjusted mortality rates for the diagnosis year by sex for selected cancer sites and, where appropriate, by sex and race and ethnicity for selected cancer sites.

I.3.a.(10) Attend CDC-sponsored meetings and training opportunities.

I.3.a.(11) Participate and collaborate actively in State Comprehensive Cancer Control planning efforts. Registry data should be the foundation of all evidence based planning efforts that are undertaken by NCCCP recipients. Performance will be measured by the extent to which the program has documented in their progress reports, participation in Comprehensive Cancer Control efforts.

State Central Cancer Registries should also annually link their files with those of the State's NBCCEDP. These linkages can provide an additional source of casefinding for the central cancer registry and are a valuable data quality improvement tool for both the registry and the NBCCEDP.

I.3.a.(12) Part I Enhancement Advanced Activities:

States applying under Part I Enhancement may also conduct advanced cancer registry activities when the cancer registry demonstrates an ongoing capacity to excel in meeting minimum standards. The purpose of these activities should be to improve either the data or the operations of the cancer registry system. These activities may include but are not limited to: aggressive passive case follow-up; active case follow-up; needs assessment; geocoding; advanced data security; implementation of a cancer inquiry response system; receipt of encrypted case reports via the Internet or other source; automated casefinding via linkage with pathology reports, disease indices, or other data sources in addition to vital records; or linkage with the National Death Index for survival analysis; coding of occupation/industry data. Performance will be measured by the extent to which the program has documented improvements to cancer registry operations and/or data that are directly associated with the conduct of the enhanced activity.

I.3.b. CDC Activities

I.3.b.(1) Convene a meeting for information sharing, problem solving, and training at least annually.

I.3.b.(2) Provide ongoing consultation and technical assistance for effective program planning and management, including, but not limited to, assistance in the development of model legislation for statewide cancer registries; assistance in establishing a computerized reporting and data processing system; assistance in establishing a system to process source records from multiple institutions to a consolidated record; and assistance in monitoring completeness, timeliness, and quality of data.

I.3.b.(3) Provide technical assistance and possible collaboration in reporting of cancer rates and other components of an annual report on cancer occurrence in the State.

I.3.b.(4) Conduct site visits to assess program progress and mutually resolve problems, as needed.

I.3.b.(5) Receive, assess, enhance, aggregate and disseminate cancer incidence data from grantees for monitoring compliance with the terms and conditions of the cooperative agreement and assessment of achievement of NPCR program standards and priorities.

I.3.b.(6) Support quality control audits of State central cancer registries.

I.3.b.(7) Collaborate with State health departments and other national partners to establish standards for data completeness, timeliness, and quality, and to promote the use of cancer registry data to support cancer prevention and control efforts.

I.4. Content

Use the information in Sections I.3. Program Requirements for NPCR, I.4. Content, I.5 Other NPCR Requirements, and I.6. Evaluation Criteria to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan.

Applications should not exceed 50 double-spaced pages including budget and justification. Applicants should also submit appendices (including curriculum vitae, job descriptions, organizational charts, and any other supporting documentation), which should not exceed an additional 20 pages.

I.4.a. NPCR Application Outline

Please provide the following information as outlined below.

I.4.a.(1) Certifications:

Non-State public health agency applicants for Part I or Part II must provide certification by the State designating the institution as the State's official applicant (Sec. 399H(a) and Sec. 399I(a)(2) of the Public Health Service Act, respectively).

I.4.a.(2) Assurances:

Recipients of funds must provide, as part of their application, assurances that they will provide for the authorization under State law of the statewide cancer registry, including the promulgation of regulations as required by Public Law 102–515; Section 399H(c)(2)(D) of the Public Health Service Act and Sections 399H(c)(1) and (2) of the Public Health Service Act. Continued funding will be contingent on the enactment of authorizing State legislation and promulgation of all required State regulations. Applicants for Part I or Part II must provide a properly signed Assurance Form in accordance with Section 399H(c)1 and 2. An Assurance Form is provided in the application package.

I.4.a.(3) Declaration of Federal Assistance Requested:

Provide a brief summary, one paragraph only, of the type of Federal assistance requested: Part I, Enhancement of an existing statewide cancer registry, including any requests for funds for advanced activities, if applicable; or, Part II, Planning and Implementation of a statewide cancer registry.

I.4.a.(4) Existing Resources and Needs Assessment:

Applicants for Part I or Part II:

Describe the current activities of, and any existing limitations to, the statewide, population-based, cancer registry including:

I.4.a.(4)(a) A description of all existing and potential hospital and non-hospital sources of cancer cases including in-state and out-of-state facilities and health care providers that provide cancer screening, diagnosis, or treatment to State residents.

I.4.a.(4)(b) A description of existing electronic cancer reporting systems to the State, including hospital, regional, and other tumor registries. Such descriptions should include an assessment of data entry and data processing procedures and any problems in reporting data to the central registry.

I.4.a.(4)(c) A description of the operations of the central cancer registry in the State which includes:

I.4.a.(4)(c)[1] A listing of data items currently collected.

I.4.a.(4)(c)[2] An assessment of completeness of cancer reporting by year of diagnosis for 1995 and forward, or NPCR reference year and forward, as applicable. A description of the method used to estimate the expected number of cases and a description of the method for determining the completeness of reporting (*e.g.*, the NAACCR method, which is used for registry certification and is based on incidence-to-mortality rate ratios) should be provided.

I.4.a.(4)(c)[3] An assessment of timeliness of case reporting, including a description of the method used to measure timeliness (for example, a direct measurement from date of diagnosis or date of first contact to date case report received; or, an indirect measurement based on the completeness tables provided to CDC each quarter for applicants currently funded by NPCR.)

I.4.a.(4)(c)[4] An assessment of the quality of data for diagnosis years 1995 through 2001 and a description of the method for measuring specific quality indicators. Indicators may include, but are not limited to, the following: The percent of data items coded as either unknown or missing for select variables, for example, age at diagnosis, sex, race, State and county; the percent of cases which were Death Certificate Only; the number of duplicate records per 1000; and the percent of cases passing EDITS using, for example, NAACCRs' metafile (CINA EDITS).

I.4.a.(4)(c)[5] A description of on-going quality assurance procedures in place for data quality, including but not limited to, case-finding and re-abstracting audits, visual editing, and types of computerized edits; and a description of any problems with quality control.

I.4.a.(4)(c)[6] A description of existing staff and sources of funding support (i.e., State, Federal, or in-kind).

I.4.a.(4)(c)[7] A description of the flow of data through the central cancer registry, including the database design as well as other data processing systems. This description should include a brief summary of data flow between hospital, regional and other tumor registries and the central cancer registry. In addition, this description should include steps such as editing, quality control, matching, merging, consolidation, feedback to reporting facilities, and error resolution, etc.

I.4.a.(4)(c)[8] Existing uses of cancer registry data.

I.4.a.(4)(c)[9] A brief description of existing registry policies and procedures that are written and currently implemented.

I.4.a.(4)(c)[10] A description of educational and training activities undertaken by central registry staff for both central registry and reporting facilities staff. The description should include how educational priorities are identified and how they relate to information obtained from quality control activities.

I.4.a.(4)(d) In an appendix, provide the most recent annual report of cancer incidence and mortality data. In the absence of a published annual report, provide a description of existing cancer data in the State, including, but not limited to, age-adjusted incidence/mortality rates for cancer for the most recent year available; a discussion of limitations, including the lack of availability of cancer rates; incompleteness of case ascertainment of all or certain cancer sites; and any difficulties identifying race/ethnicity.

I.4.a.(4)(e) A description of legislation and regulations in place, pending legislation, or progress toward introducing legislation that legally supports the existence and operation of a State central cancer registry. This should include a letter from the applicant's State Attorney General or highest ranking State Legal Officer describing to what extent the applicant is in compliance with Section 399H(c)(2)(D) of the Public Health Service Act which requires the authorization under State law of the statewide cancer registry. The letter should also document the extent to which the State has promulgated regulations to support all eight criteria specified in Section 399H(c)(2)(D) of the Public Health Service Act;

I.4.a.(4)(f) A description of central cancer registry computer hardware and software to include:

I.4.a.(4)(f)[1] Existing computer equipment for central registry operations as well as regional registry operations, if applicable.

I.4.a.(4)(f)[2] An assessment of the central cancer registry software system including strengths and limitations of the system and how it is meeting functional requirements of a system as specified in the NAACCR Standard Volume III, Standards for Completeness, Quality, Analysis, and Management of Data.

I.4.a.(4)(f)[3] Report-generating capacity of current software package(s) needed for management reports, annual reports, special studies, and potential cancer cluster investigations.

I.4.a.(4)(f)[4] Procedures for receiving, matching, and merging data from various reporting sites (or facilities), including a description of the type of matching system (e.g., deterministic or probabilistic).

I.4.a.(4)(f)[5] Procedures for transmitting data to other central cancer registries and a description of the barriers of electronic exchange.

I.4.a.(4)(f)[6] Procedures for matching registry cases with deaths in the State mortality database and processing cases for death certificate follow-back. Also describe any procedures to match with the National Death Index (NDI).

I.4.a.(4)(f)[7] Procedures for matching registry cases with geographic information systems to identify the corresponding census tract information.

I.4.a.(4)(f)[8] Procedures for production of an electronic annual report and/or a Web-based query system of a public use data file.

I.4.a.(5) Management and Staffing Plan: Applicants for Part I or Part II:

Describe how the program will be effectively managed including:

I.4.a.(5)(a) Management structure, including the lines of authority and plans for fiscal control.

I.4.a.(5)(b) The staff positions responsible for implementation of the program.

I.4.a.(5)(c) Qualifications of the designated or proposed management and technical staff.

I.4.a.(5)(d) A brief description of the training needs/plan for the staff. A copy of the organizational chart indicating the placement of the proposed program, abbreviated (one page) resumes for designated staff, and job descriptions for the proposed staff should be included in the application as an appendix.

I.4.a.(6) Collaborative Relationships: Applicants for Part I and Part II:

Describe, and provide evidence of (or for Part II, describe plans for), collaborative relationships between the State and agencies relevant to cancer registries or cancer surveillance:

I.4.a.(6)(a) An advisory committee to assist in building consensus, cooperation, and planning for the statewide cancer registry.

I.4.a.(6)(b) Within the State such as Vital Statistics Office, State cancer prevention and control program(s), universities, the health care community, hospital associations, and professional and voluntary associations.

I.4.a.(6)(c) With other States or national organizations, such as sharing of case data reciprocal agreements and actual sharing of case data.

I.4.a.(6)(d) With Federally-funded programs such as the National Breast and Cervical Cancer Early Detection Program; Department of Veterans Affairs; Military and Armed Forces facilities; the National Cancer Institute's Surveillance, Epidemiology, and End Results Program; and Native American Health Boards/Tribal Organizations/ Indian Health Service in States with Native American populations.

I.4.a.(6)(e) Identify and describe any proposed new collaborative relationships that would enhance registry performance.

I.4.a.(7) Operational Plan: Applicants for Part I:

Describe in detail the objectives for the proposed enhancements to the existing State cancer registry. These objectives should relate directly to the ''Recipient Activities'' listed under ''Program Requirements'' and Program Assurances listed under ''Other Requirements'' in Section I of this Announcement. The applicant should describe the specific outcome and process objectives to directly address and resolve the needs identified in the section entitled, ''Existing Resources and Needs Assessment.'' A projected timetable for program implementation and evaluation should be included that displays dates for the accomplishment of specific proposed activities.

I.4.a.(8) Data Utilization:

Applicants for Part I or Part II:

Delineate a plan for the use of cancer registry data for cancer prevention and control within the State. Examples might include, but not be limited to: detailed incidence/mortality estimates; linkage with a statewide cancer screening program to improve follow-up of screened patients; health-event investigations; needs assessment/ program planning; program evaluation; and/or descriptive epidemiologic studies.

I.4.a.(9) Workplan:

A Year 01 detailed workplan and timeline, including evaluation activities to be accomplished must be submitted. The workplan should include the following:

I.4.a.(9)(a) Goals and objectives for Year 01.

I.4.a.(9)(b) Activities planned to achieve objectives.

I.4.a.(9)(c) Data that will be used to assess program activities.

I.4.a.(9)(d) Timeline for assessing progress.

I.4.a.(9)(e) The person or persons responsible for activities.

I.4.a.(9)(f) Overall measures of success.

I.4.a.(9)(g) A plan for program management, including an organizational chart. Describe those positions which have oversight responsibility. Address leadership and administrative plans. Discuss strategies for ensuring appropriate communication among key staff on the status of program implementation, maintenance, and related issues; and

I.4.a.(9)(h) Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, key personnel, workplan, etc.) not included in any previous applications.

I.4.a.(9)(i) The following components should also be addressed in the work plan.

I.4.a.(9)(i)[1] A plan for achieving all program objectives summarized in Attachment I ''NPCR Objectives and Detailed Standards'' (e.g. legislation and regulations, uniform data elements, completeness of reporting, timeliness of reporting, etc). If appropriate, the plan may include improving the completeness or quality of past years' data for one or more diagnosis years beginning with the registry's NPCR reference year through the 1999 diagnosis year.

I.4.a.(9)(i)[2] A plan for data use, analysis, and dissemination (only from recipients who have achieved NPCR standards for completeness, timeliness, and quality).

I.4.a.(10) Itemized Budget and Justification:

A detailed budget with supporting justification must be provided and should be related to objectives that are stated in the applicant's workplan.

Applicants should note the following budget related issues:

I.4.a.(10)(a) Indirect Costs:

If indirect costs are requested, it will be necessary to include a copy of your organization's current negotiated Federal Indirect Cost Rate Agreement or a Cost Allocation Plan for those grantees under such a plan.

I.4.a.(10)(b) Travel:

Participation in CDC sponsored training workshops and meetings is

essential to the effective implementation of the NCPCP. Travel for program implementation should be justified and related to implementation activities.

Participation or attendance in non-CDC sponsored professional meetings (e.g., ACS, NCI, APHA, other) may be requested but must be directly relevant to workplan activities. Participation may include the presentation of papers, poster sessions or exhibits on the project. Specific requests should be submitted with appropriate justification.

The annual travel budget should include:

I.4.a.(10)(b)[1] Travel funds for up to two persons to Atlanta, GA to attend the CDC Program Director's Meeting.

I.4.a.(10)(b)[2] Travel funds to attend national cancer registry meetings and applicable workshops.

I.4.a.(10)(b)[3] Travel funds for up to two persons to Atlanta, GA to make one, two-day trip to Atlanta for a reverse site visit.

The following additional guidance relates to the NPCR portion only of this program announcement.

I.4.a.(10)(c) Financial Participation:

The level of financial participation by the applicant should also be reflected in this section as it relates to:

I.4.a.(10)(c)[1] Maintenance of Effort: Applicants for Part I or Part II:

Identify and describe the amount of contributions expended during the fiscal year preceding the first year of the original NPCR cooperative agreement for the collection of data on cancer. The amount of contributions will be used to establish a baseline for current and future maintenance of effort requirements. [Section 399H(b)]

I.4.a.(10)(c)[2] Matching Funds: Applications for Part I ONLY:

Identify and describe:

I.4.a.(10)(c)[2][a] State sources of allowable matching funds for the program and the estimated amounts from each source. The total amount of the non-Federal contributions shall be an amount that is not less than 25 percent of the total cost of the program including the match or one dollar for every three dollars of Federal funds provided in the grant. [Section 399H(b)]

I.4.a.(10)(c)[2][b] Procedures for documenting the value of non-cash matching funds.

I.4.a.(11) Appendices:

The appendices should include new personnel, vacant positions (note the duration), health department leadership and organizational changes impacting on the program, and legislative impacts on the program.

I.5. Other NPCR Requirements

I.5.a. Technical Reporting Requirments

In addition to the general reporting requirements that apply to all components (Please refer to Section J.1.—''Technical Reporting Requirements''.) the following additional Reporting Requirements apply to the NPCR component only of this program announcement.

I.5.a.(1) NPCR Call for Data:

The first submission will be due in January of each year in the form of a Call for Data. Grantees will report a subset of the Required and Recommended data items to CDC annually as one of the progress reports. Cumulative data will be requested, from the reference year to 12 months past the close of the diagnosis year. Detailed reporting instructions will follow. Annual program evaluation data should also be submitted at this time.

I.5.a.(2) Moving from a Planning Program to an Enhancement Program within the five year Project Period.

For NPCR specifically, the first of the two required progress reports may be used as evidence of NPCR's Planning Program's attainment of goals and objectives and the program's readiness to move to an Enhancement Program award should funds be available. In future years, Planning Program grantees wishing to apply for an Enhancement Program, should submit an application that:

I.5.a.(2)(a) Demonstrates success in meeting Planning Program objectives to plan, implement, and support the operation of a population-based statewide cancer registry.

I.5.a.(2)(b) References ''Application Content'' and ''Recipient Activities'' sections of this program announcement including a line item budget and budget justification. See Section I.4.a.(10) ''Itemized Budget and Justification'' for general guidance in developing this section of the Application. See also Section I.4.a.(10)(c) ''Financial Participation'' for additional guidance that is specific to the NPCR component.

Enhancement Program applications will be reviewed by CDC staff utilizing an Internal CDC Review process. Applications can be submitted in fiscal year 2003, 2004, 2005, or 2006. Applications must be submitted (post marked) by February 28 of the fiscal year in which the applicant wishes to be considered for Implementation funding.

Funding decisions may be made on the basis of satisfactory progress on the Performance Measures noted for each component as evidenced by required reports, application score, and the availability of funds. Performance measures are listed after each Recipient Activity.

I.6. NPCR Evaluation Criteria for both Planning and Enhancement Programs

I.6.(a) Resources and Needs Assessment (25 points)

The extent to which the applicant describes current activities and existing strengths and limitations of the state-level cancer registry, and provides the following:

(a) A description of all existing and potential sources of cancer cases;

(b) a description of existing computerized cancer reporting systems in the State;

(c) a description of centralized cancer reporting in the State including a listing of data items currently collected; an assessment of data completeness, timeliness and quality; a description of ongoing quality assurance procedures for data quality; a description of existing staff, qualifications, and source of funding; a description of the flow of data through the central cancer registry; a description of existing uses of cancer registry data; a description of existing registry policies and procedures that are written and implemented; a description of educational and training activities undertaken by central registry staff for central registry and reporting facilities staff; a copy of the most recent annual report of cancer incidence and mortality data or a description of existing cancer data in the State; a description of ''enabling'' State legislation and regulations including a copy of the State Attorney General's (or highest ranking State Legal Officer's) letter of assessment; and a description of existing computer hardware and software.

I.6.(b) Collaboration (10 points)

The extent to which the applicant describes a current or proposed advisory committee and describes past, current, and proposed collaboration with the relevant organizations and agencies within the State; with other States or national organizations; with Federally-funded health care programs such as the National Breast and Cervical Cancer Early Detection Program, Department of Veterans Affairs, Military and Armed Forces Facilities, the National Cancer Institute's Surveillance, Epidemiology, and End Results Program, and Native American Health Boards/Tribal organizations/Indian Health Service in States with Native American populations.

I.6.(c) Proposed Objectives (20 points)

The extent to which objectives are specific, measurable, time-phased, and

realistic; provide for outcome and process objectives which meet the requirements of Public Law 102–515; and are derived from needs identified in the resources and needs assessment.

I.6.(d) Proposed Implementation Plan and Schedule (20 points)

The extent to which the major steps required for project implementation adequately address the needs assessment, are realistically described, and the project timetable displays appropriate dates for the accomplishment of specific project activities.

I.6.(e) Data Utilization (10 points)

The extent to which the applicant provides a relevant and realistic plan to use cancer registry data within the State for cancer prevention and control. The applicant should also address the extent to which they have plans for production of an electronic annual report and/or a Web-based query system of a public use data file.

I.6.(f) Project Management and Staffing Plan (15 points)

The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the program.

I.6.(g) Budget (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and program activities.

J. Other Requirements

J.1. Technical Reporting Requirements

All of the following reporting requirements to be submitted to CDC should include an original and two copies of:

J.1.a. Progress Report (1 of 2)

The first submission will be due February 28 of each year in the form of a progress report that succinctly describes progress for the period September 30, 2002 thru January 31, 2003 (for the first budget period) in meeting stated objectives. In future years, submission of this report should cover the period June 30–January 31 (of each year). If program objectives were not met, provide an explanation and steps to be taken to meet the objectives. This report will also serve as a continuation application and should include:

J.1.a.(1) A workplan with new objectives for the following budget period.

J.1.a.(2) A one year line item budget and justification for the same 12 month period.

J.1.a.(3) A hard copy of the State's most recent annual report on cancer incidence.

J.1.a.(4) Additional component specific information.

J.1.a.(4)(a) NCCCP:

See ''Section G.5. Other Requirements'' for specific Guidance on the content of this progress report and how Planning Program recipients may apply for Implementation Program funds in future years.

J.1.a.(4)(b) NBCCEDP:

There is no additional specific information for this component.

J.1.a.(4)(b) NPCR:

See ''Section I.5. Other Requirements'' for specific guidance on how Planning Program recipients may apply for Enhancement Program funds in future years.

J.1.b. Progress Report (2 of 2)

The second submission will be due July 31 of each year in the form of a progress report addressing progress toward achieving objectives detailed in the application during the time period from February 1 through June 30 (5 months).

All manuscripts published as a result of the work supported in part or whole by the cooperative agreement, should be submitted with the progress report.

J.1.c. Financial Status Report

Due no more than 90 days after the end of the budget period with unobligated funds tracked separately by component (NCCCP, NBCCEDP, and NPCR).

J.1.d. Final Financial and Performance Reports

Due 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.

J.2. Additional Requirements for all components

The following additional requirements are applicable to this program. For a complete description of each, see the ''Additional Requirements'' attachment in the application kit.

AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

The following additional requirements are applicable to the specific components under which they are listed.

J.2.(a) Additional Requirements for NCCCP

AR–8—Public Health System Reporting Requirements

J.2.(b) Additional Requirements for NBCCEDP:

AR–1—Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

J.2.(c) Additional Requirements for NPCR

AR— Human Subjects Requirements
AR—2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–21—National Program of Cancer Registries Program Standards
AR–22—Required Status Table

K. Authority and Catalog of Federal Domestic Assistance Number

K.1. NCCCP

This program is authorized under section 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 247b (k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

K.2. NBCCEDP

This program is authorized under sections 1501–1510 [42 U.S.C. 300k, 42 U.S.C. 3001, 42 U.S.C. 300m, 42 U.S.C. 300n, 42 U.S.C. 300 n–1, 42 U.S.C. 300 n–2, 42 U.S.C. 300 n–3, 42 U.S.C. 300 n–4, 42 U.S.C. 300 n–4a, 42 U.S.C. 300 n–5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.919.

K.3. NPCR

This program is authorized under sections 399H–399L of the Public Health Service Act, [42 U.S.C. sections 280e–280e–4; Public Law 102–515], as amended. This program was re-authorized as part of the Women's Health Research and Prevention Amendments of 1998, Public Law 105–340. The Catalog of Federal Domestic Assistance number is 93.283.

L. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Annie Camacho or Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Telephone number: Annie Camacho: 770–488–2735, Glynnis Taylor: 770–488–2752.

E-mail address: Annie Camacho: *atc4@cdc.gov*, Glynnis Taylor: *gld1@cdc.gov*.

For program technical assistance, contact:

NCCCP: Leslie S. Given, MPA, NCCCP Unit, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE (MS K–57), Atlanta, GA 30341–3717. Telephone number: 770–488–3099. E-mail address: *llg5@cdc.gov*.

NBCCEDP: Susan True, M.Ed., Branch Chief, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE (MS K–57), Atlanta, GA 30341–3717. Telephone number: 770–488–4880. E-mail address: *smt7@cdc.gov*.

NPCR: Leah Simpson, Program Analyst, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE (MS K–53), Atlanta, GA 30341–3717. Telephone number: 770–488–4158. E-mail address: *lds0@cdc.gov*.

Dated: April 16, 2002.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–9724 Filed 4–22–02; 8:45 am]

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Federal Register

Tuesday,
April 23, 2002

Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 16, 22, et al.
Federal Acquisition Regulation; Compensation Cost Principle; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 22, 31, 37, and 52

[FAR Case 2001–008]

RIN 9000–AJ36

Federal Acquisition Regulation; Compensation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the ''compensation for personal services'' cost principle.

DATES: Interested parties should submit comments in writing on or before June 24, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2001–008@gsa.gov*

Please submit comments only and cite FAR case 2001–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202)

501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAR case 2001–008.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils performed an analysis of the cost principle at FAR 31.205–6, Compensation for personal services. This analysis excluded a review of the paragraphs of the cost principle addressing pension costs (paragraph (j)), deferred compensation other than pensions (paragraph (k)), and postretirement benefits other than pensions (paragraph (o)), which the Councils are planning to review at a later date under a separate FAR case.

Specifically, the proposed rule revises FAR 31.205–6 by—

1. Adding a definition for ''compensation for personal services'' at FAR 31.001, Definitions;

2. Removing as unnecessary the listing of examples of specific types of compensation currently located at FAR 31.205–6(a);

3. Clarifying and moving the current FAR 31.205-6(b)(2)(i) to a new paragraph FAR 31.205–6(a)(6), and expanding the new paragraph to cover members of ''limited liabilities companies'' since their compensation also requires special consideration;

4. Revising paragraph (b) to consolidate all reasonableness provisions, including those dealing with labor-management agreements that are currently addressed at FAR 31.205–6(c);

5. Deleting the language that places the burden of demonstrating reasonableness on the contractor, currently found in FAR 31.205–6(b)(1) because it is redundant of language currently found in FAR 31.201–3(a). By removing this language, the Councils are not intending to imply that this burden has shifted to the Government;

6. Rewriting paragraph (h), as new paragraph (g), entitled ''Backpay'' to improve its clarity, without changing its meaning, and to emphasize that backpay for underpaid work is the only allowable retroactive adjustment, except as may be specifically listed in the paragraph; and

7. Making other changes to clarify, improve the structure, and remove redundancies throughout the cost principle.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 16, 22, 31, 37, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–008), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 22, 31, 37, and 52

Government procurement.

Dated: April 16, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 16, 22, 31, 37, and 52 as set forth below:

1. The authority citation for 48 CFR parts 16, 22, 31, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

16.203–4 [Amended]

2. Amend section 16.203–4 in paragraph (c)(4)(ii) by removing ''31.205–6(m)'' and adding ''31.205–6(l)'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.101–2 [Amended]

3. Amend section 22.101–2 in the last sentence of paragraph (a) by removing ''31.205–6(c)'' and adding ''31.205–6(b)'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

4. Amend section 31.001 by adding, in alphabetical order, the definition ''Compensation for personal services'' to read as follows:

31.001 Definitions.

* * * * *

Compensation for personal services means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

* * * * *

31.201–5 [Amended]

5. Amend section 31.201–5 in the last sentence by removing ''31.205–6(j)(4)'' and adding ''31.205–6(i)(4)'' in its place.

6. Amend section 31.205–6 by—

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) through (p) as paragraphs (c) through (o), respectively;

d. Revising newly designated paragraphs (c) through (g);

e. Removing from newly designated paragraph (h)(3) ''paragraph (i)'' and adding ''paragraph (h)'' in its place;

f. Removing from the last sentence of newly designated paragraph (i)(2) introductory text the words ''(j)(2)(i) and (j)(3)'' and adding ''(i)(2)(i) and in paragraphs (i)(3)'' in its place; removing from paragraph (i)(2)(iii) ''(j)(7)'' and adding ''(i)(7)'' in its place; removing from the second sentence of paragraph (i)(3)(v) introductory text ''(j)(4)'' and adding ''(i)(4)'' in its place; removing from the last sentence of paragraph (i)(4)(ii) ''paragraph (j)(4)(ii)'' and adding ''paragraph (i)(4)(ii)'' in its place; removing from the last sentence of paragraph (i)(5) introductory text ''(j)(1)'' and adding ''(i)(1)'' in its place; removing from paragraph (i)(5)(ii) ''(j)(3)(ii)'' and adding ''(i)(3)(ii)'' in its place; removing from the last sentence of paragraph (i)(7) introductory text ''subdivisions (j)(3)(i)'' and adding ''paragraphs (i)(3)(i)'' in its place; and by removing from paragraph (i)(8)(iii) ''subdivision (j)(3)(ii) above'' and adding ''paragraph (i)(3)(ii) of this subsection'' in its place;

g. Removing from newly designated paragraph (n)(2) ''(o)(2)(i)'' and adding ''(n)(2)(i)'' in its place, and removing ''section'' and adding ''subsection'' in its place;

h. Removing from the first sentence of newly designated paragraph (n)(5) ''(o)(2)(iii)'' and adding ''(n)(2)(iii)'' in its place;

i. Removing from the last sentence of newly designated paragraph (o)(1) introductory text ''(p)(2)(ii)'' and adding ''(o)(2)(ii)'' in its place; removing the colon at the end of paragraph (o)(2) introductory text and adding an em-dash (—) in its place, and by removing from paragraph (o)(2)(i) ''(j)(5) and (j)(8)'' and adding ''(i)(5) and (i)(8)'' in its place.

The revised text reads as follows:

31.205–6 Compensation for personal services.

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (f), (g), (i), (j), (l), and (n) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant ACO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services.

(6) The cognizant ACO must—

(i) Give special consideration to—

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) Ensure that compensation costs covered by this paragraph are not—

(A) A distribution of profits, which is not an allowable contract cost; and

(B) In excess of costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it.

(b) *Reasonableness*—(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under ''arm's length'' labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In addition to the provisions of 31.201–3, in testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms—

(i) Of the same size;

(ii) In the same industry;

(iii) In the same geographic area; and

(iv) Engaged in similar non-Government work under comparable circumstances.

(c) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of—

(i) Cash;

(ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (c)(2) of this subsection regarding valuation; or

(iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(d) *Income tax differential pay.* (1) Differential allowances for additional

income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable.

(e) *Bonuses and incentive compensation.* (1) Bonuses and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the—

(i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(ii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (e)(1) and (j) of this subsection.

(f) *Severance pay.* (1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (i)(7) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by—

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(5) Under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237–8).

(g) *Backpay.* Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if—

(i) A formal agreement or understanding exists between management and the employees concerning these payments; or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

* * * * *

31.205–7 [Amended]

7. Amend section 31.205–7 in the last sentence of paragraph (c)(2) by removing ''31.205–6(g)'' and adding ''31.205–6(f)'' in its place.

31.205–13 [Amended]

8. Amend section 31.205–13 in the last sentence of paragraph (b) by removing ''31.205–6(f)'' and adding ''31.205-6(e)'' in its place.

31.205–46 [Amended]

9. Amend section 31.205–46 in the last sentence of paragraph (f) by removing ''31.205–6(m)(2)'' and adding ''31.205–6(l)(2)'' in its place.

PART 37—SERVICE CONTRACTING

10. Amend section 37.113–1 by revising the introductory text of paragraph (a) to read as follows:

37.113–1 Waiver of cost allowability limitations.

(a) The head of the agency may waive the 31.205–6(f)(5) cost allowability limitations on severance payments to foreign nationals for contracts that—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–18 [Amended]

11. Amend section 52.215–18 by removing from the clause heading ''(OCT 1997)'' and adding ''(DATE)'' in its place; and by removing from the second sentence of the clause ''31.205-6(o)(6)'' and adding ''31.205–6(n)(6)'' in its place.

52.237–8 [Amended]

12. Amend section 52.237–8 by removing from the provision heading ''(OCT 1995)'' and adding ''(DATE)'' in its place; and by removing from paragraph (a) of the provision ''31.205–6(g)(3)'' and adding ''31.205–6(f)(5)'' in its place.

52.237–9 [Amended]

13. Amend section 52.237–9 by removing from the clause heading ''(OCT 1995)'' and adding ''(DATE)'' in its place; and by removing from paragraph (a) of the clause ''31.205–6(g)(3)'' and adding ''31.205–6(f)(5)'' in its place.

[FR Doc. 02–9665 Filed 4–22–02; 8:45 am]

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Federal Register

Tuesday,
April 23, 2002

Part IX

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4682–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from October 1, 2001, through December 31, 2001.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on October 1, 2001, and ending on December 31, 2001.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from October 1, 2001, through December 31, 2001. This notice also includes a waiver from an earlier reporting period that was inadvertently omitted from the appropriate earlier report. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in title 24 of the Code of Federal Regulations and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between January 1, 2002, through March 31, 2002.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: April 16, 2002.

Alphonso Jackson,

Deputy Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2001 through December 31, 2001

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Healthy Homes and Lead Hazard Control.
III. Regulatory waivers granted by the Office of Housing.
IV. Regulatory waivers granted by the Office of Multifamily Housing Assistance Restructuring, (OMHAR).
V. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The Commonwealth of Virginia requested a waiver of the submission deadline for the State's 2000 program year Consolidated Annual Performance and Evaluation Report (CAPER).

Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: October 1, 2001.

Reasons Waived: The Commonwealth of Virginia requested an extension due to personnel changes in the Virginia Housing Division and additional needed effort to develop information from the Commonwealth's and IDIS reporting format. While HUD is desirous of timely reports, the Department is also interested in ensuring that information from grantees is complete and accurate. The Department granted the Commonwealth of Virginia an extension to October 26, 2001, to submit its 2000 CAPER.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development,

Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The City of Berwyn, Illinois, requested a waiver of the submission deadline for the city's 2000 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 16, 2001.

Reasons Waived: The city experienced difficulty with the Integrated Disbursement and Information System (IDIS). Because this is the city's first CAPER, the city wants to ensure it has adequate time to consult with its subrecipients. While HUD is desirous of timely reports, the Department is also interested in ensuring that the information from grantees is complete and accurate. The Department granted the city an extension to February 28, 2002, to submit its 2000 CAPER.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Cook County, Illinois, requested a waiver of the submission deadline for the county's 2000 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 16, 2001.

Reasons Waived: The county discovered a number of inaccuracies and discrepancies in report data generated by the Integrated Disbursement and Information System (IDIS). The county requested additional time to ensure that its information is accurate. While HUD is desirous of timely reports, the Department is also interested in ensuring that information from grantees is complete and accurate. The Department granted the county an extension to February 28, 2002, to submit its 2000 CAPER.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.2.

Project/Activity: The State of New Mexico requested a waiver of the HOME program definition of ''Homeownership'' under § 24 CFR 92.2

Nature of Requirement: As defined in § 92.2, homeownership requires a fee simple title or a 99-year leasehold interest in a one to four unit dwelling or condominium unit, or equivalent form of ownership approved by HUD.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: October 1, 2001.

Reasons Waived: The Department determined that application of the 99-year lease requirement would constitute an undue hardship. Since the Bureau of Indian Affairs restricts the term of land leases to 50-years, the 99-year lease provision of the HOME program would make it impossible to provide homeownership assistance to families on tribal lands.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.250(a).

Project/Activity: Kimball, McDowell County, West Virginia, requested a waiver of the per-unit subsidy limit for the HOME Program.

Nature of Requirement: Section 92.250(a) requires that the amount of HOME funds used on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)).

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 6, 2001.

Reasons Waived: The Department is aware that the projected cost increase is due in part to an expedited schedule to respond to a natural disaster that affected the area and was not in the control of the West Virginia Housing Development Funds. The replacement housing is within a Presidentially-Declared Disaster Area. These circumstances constitute good cause for a suspension of section 212(e) of the National Affordable Housing Act and a waiver of the regulations.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.251 & 92.502(d).

Project/Activity: The State of Wisconsin requested a waiver of HOME Program regulations governing property standards and program completion. The State seeks relief from HOME requirements in order to reimburse the Wisconsin Coulee Region Community Action Plan (CAP) for the expense incurred in rehabilitating a property.

Nature of Requirement: Section 92.251 requires that housing constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Section 92.502 (d) requires that complete project complete information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project draw down.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 20, 2001.

Reasons Waived: The homeowner refused to allow the Wisconsin Coulee Region CAP access to his property to complete the installation of four feet of deck railing and one exterior ground fault interruption circuit necessary to bring his property up to the applicable standards. Consequently the property does not meet local codes and rehabilitation standards. The CAP indicated that it has exhausted all alternatives to complete the activity. The Department determined that there was good cause for granting the waiver because the CAP has demonstrated due diligence in attempting to satisfy program requirements.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.254(a)(5)(ii)(A)(7).

Project/Activity: Delaware County, Pennsylvania, requested a waiver of 24 CFR 92.254(a)(5)(ii)(A)(7) to allow low-income families of HOME-assisted property an additional 18 months to complete the acquisition of their homes under lease-purchase agreements.

Nature of Requirement: Section 92.254(a)(5)(ii)(A)(7) requires that families participating in HOME-funded lease purchase program must acquire their homes within 36 months of signing the lease-purchase agreement.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 6, 2001.

Reasons Waived: HUD recognizes the challenges and delays that have resulted from having to bring in a second nonprofit to take over the program and considers this circumstance as good cause for granting a waiver. Further, HUD is concerned that none of the original families selected for this program has been able to complete their lease—purchase obligations in the past four years. The waiver grants an additional 12 months for transfer of ownership to take place. This waiver will allow time for five families that are deemed to have some possibility to complete purchase to do so.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The Municipality of Carolina, Puerto Rico, requested a waiver of its FY 1995 HOME program expenditure deadline of June 30, 2000.

Nature of Requirement: Section 92.500(d)(1)(C) requires HUD to deobligate any funds in the United States Treasury account which are not expended within 60 months of the last day that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 20, 2001.

Reasons Waived: The lack of a functioning Community Housing Development Organization (CHDO) and project delays caused by unanticipated circumstances affected the PJ's ability to spend its HOME allocation in a timely manner. The Department noted that the Municipality has made several administrative changes to improve the accountability and performance of its HOME program. Therefore, given the positive steps taken by the Municipality to address its problems and the fact that the 1995 expenditure shortfall was fully expended four and one-half months after the June 30, 2000, regulatory deadline, the Department determined that there is good cause to grant the requested waiver.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.503(b)(2).

Project/Activity: The County of Burlington, New Jersey, requested a waiver of the repayment requirements in 24 CFR 92.503(b)(2) of the HOME regulations.

Nature of Requirement: Section 92.503(b)(2) requires a participating jurisdiction (PJ) to repay any HOME funds invested in a project that is terminated before completion.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: December 20, 2001.

Reasons Waived: HUD determined that the County of Burlington's exercise of due diligence in recovering almost all of the HOME funds expended on this project constitutes good cause for a waiver. This waiver relieves the County of Burlington's obligation to repay the outstanding amount of $2,941.05 used on this project.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 570.208(a)(3).

Project/Activity: The City of St. Louis, Missouri, requested a waiver of the low- and moderate-income national objective requiring that low- and moderate-income households must occupy at least 51 percent of the units in a multi-unit residential structure.

Nature of Requirement: Section 570.208(a)(3) requires that at least 51 percent of the units in a multi-unit residential structure be occupied by low- and moderate-income households.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2001.

Reasons Waived: The methodology identified in the regulations at 24 CFR 570.208(a)(3) for multi-unit residential building is not required by statute. Therefore, HUD may consider a waiver to permit the use of another methodology to meet the housing national objective. Based on the information provided by the city, the Department determined that the city has demonstrated good cause for the waiver. This project will significantly promote the purposes of the Housing and Community Development Act by expanding housing opportunities and choices for low- and moderate-income households and providing an income mix in a redeveloping neighborhood. The waiver is granted with the understanding that low- and moderate-income households will occupy 20 percent of the units and that the CDBG funds will constitute 7.5 percent of the total cost of the project.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 574.310(c)(1)(i).

Project/Activity: The State of Indiana requested a waiver of the minimum use period for structures assisted with HOPWA funds.

Nature of Requirement: Section 574.310 (c)(1)(i) requires that any building or structure assisted with HOPWA funds for new construction, substantial rehabilitation or acquisition must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseased for a period of not less that 10 years.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 29, 2001.

Reasons Waived: The Department determined that there was good cause for the waiver because the supporting documentation verified that the assisted structure is no longer needed to provide supported housing or assistance. Due to the development of new drug treatment modalities, individuals with HIV/AIDS are currently able to live longer and in more independent settings than this facility provides. The facility is presently operating at a financial loss due to low occupancy. Thus the continued operation of the facility for such purpose is no longer feasible.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

II. Regulatory Waivers Granted by the Office of Healthy Homes and Lead Hazard Control

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR Part 35, Subparts B–R.

Project/Activity: Waiver of the existing compliance date (January 10, 2002) for the HUD Lead Safe Housing Rule for all HUD programs in New York, NY. The new compliance date is April 10, 2002.

Nature of Requirement: The regulations in 24 CFR part 35, Subparts B–R, requires actions to identify and reduce lead-based paint hazards in pre-1978 housing that is financially assisted or sold by the federal government. Specific requirements depend on whether the housing is being disposed of or assisted by the federal government, on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied.

Granted By: Alphonso Jackson, Deputy Secretary.

Date Granted: November 1, 2001.

Reason Waived: The availability of trained contractors is inadequate due to the ongoing recovery efforts following the attacks on the World Trade Center on September 11, 2001.

Contact: David E. Jacobs, Director, Office of Healthy Homes and Lead Hazard Control Department of Housing and Urban Development, Room P3206, L'Enfant Plaza, Washington, DC 20410; telephone: (202) 755–4973.

III. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: Credit Watch/Termination Threshold, Washington, DC.

Nature of Requirement: Section 202.3(c)(2)(iii) establishes a threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the field office default and claim rate.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2001.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD field office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the third quarter of CY 2001.

Contact: Joy L. Hadley, Director, Quality Assurance Division, U. S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–7000; telephone: (202) 708–2830.

• *Regulation:* 24 CFR 203.42.

Project/Activity: City of Palatka Housing Authority, Palatka, Florida.

Nature of Requirement: Section 203.42 prohibits mortgage insurance on property that is part of a project, subdivision, or group of rental properties in which the mortgagor has a financial interest in eight or more dwellings.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 26, 2001.

Reason Waived: The waiver was granted in order to permit the Housing Authority of the City of Palatka, Florida, to refinance the blanket mortgage on twenty-two units with FHA mortgage insurance to promote the City's affordable housing and homeownership programs.

Contact: Vance Morris, Director, Office of Single Family Program Development,

Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2121, extension 2204.

• *Regulation:* 24 CFR 203.670(b)(3), 24 CFR 203.674(b), 24 CFR 203.675, 24 CFR 203.679(a).

Project/Activity: Friends of Tyler School, Washington, DC.

Nature of Requirement: Section 203.670(b)(3) permits occupied conveyance of the property if it is in the Secretary's interest under 24 CFR 203.671. Section 203.674(b) states the required conditions for continued occupancy for an occupant who does not meet the illness or injury criteria. Section 203.675 sets out the requirements for adequate notice to occupants of pending acquisition. Section 203.679(a) states that occupancy of HUD-acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 12, 2001.

Reason Waived: Those regulations were waived in order to allow the Department to accept an occupied conveyance. Occupied conveyance will facilitate and expedite a direct sale of the property to Friends of Tyler School, a private nonprofit organization with headquarters next-door to the property.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1672, extension 2296.

• *Regulation:* 24 CFR 203.673(a) and (b), 203.674(b)(1), 203.675, 203.676, 203.677, 203.678, and, 291.100(a)(2).

Project/Activity: Easy Life Real Estate Systems, Inc. in Chicago, Illinois.

Nature of Requirement: Section 203.673(a) and (b) require each residential unit that HUD acquires to contain adequate heating facilities, electrical supplies, cooking and sanitary facilities, and a continuing supply of hot and cold water. Section 203.674(b)(1) governs the application process for eligibility for continued occupancy of a property that has been conveyed to FHA in exchange for insurance benefits. Section 203.675 addresses the process by which notice is provided to the occupants of each property when acquisition by FHA is anticipated to occur within 60 to 90 days. Section 203.676 provides the time frames in which the occupants must respond to the standard notice to request occupied conveyance. Section 203.677 sets forth the procedures that FHA uses to approve or deny a request for occupied conveyance. Section 203.678 contains time frames for requesting occupied conveyance. Section 291.100(a)(2) precludes former mortgagors who have defaulted on their FHA-insured mortgages from obtaining a right of first refusal to purchase the property from FHA that had been the security for the defaulted mortgage.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 5, 2001.

Reason Waived: Waiving the regulations will enable the FHA mortgagors who still own properties subject to FHA-insured mortgages to continue to occupy their homes while the properties are conveyed to HUD and will offer them the opportunity to repurchase from the Department the properties they are occupying. This waiver is limited to FHA mortgagors who were members of the class action suit captioned *Ruby Honorable* v. *Easy Life Real Estate System, Inc.,* covered by the settlement agreement dated March 16, 2001, and still occupying their homes. The court order entering the settlement agreement establishes that the covered FHA mortgagors were victims of predatory practices. The waivers are consistent with the Department's objectives of helping to maintain homeownership and affordable housing opportunities and mitigate losses to the insurance funds.

Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410–7000; telephone: (202) 708–1672, extension 2296.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Village Pointe, Norfolk, Virginia, Project Number: 051–EE064/VA36–S981–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2001.

Reason Waived: The Sponsor exhausted all efforts to obtain additional funding from other sources, the project is comparable to other similar projects developed in the area and is economically designed.

Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Buckingham Terrace III, Brunswick, Georgia, Project Number: 061–EE093/GA06–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 10, 2001.

Reason Waived: The Sponsor exhausted all efforts to obtain additional funding from other sources, and the project is comparable to other similar projects developed in the area and is economically designed.

Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mt. Carmel Senior Housing, Brooklyn, New York, Project Number: 012–EE277/NY36–S991–017.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: The Sponsor exhausted all efforts to obtain additional funding from other sources, the project is economically designed and comparable to other similar projects developed in the area.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shakespeare Senior Housing, Warner Robins, Georgia Project Number: 012–EE266/NY36–S991–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 13, 2001.

Reason Waived: The Sponsor exhausted all efforts to obtain additional funding from other sources, the project is economically designed and comparable to other similar projects developed in the area.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* Section 891.100(d).

Project/Activity: Falcon Park III, Warner Robins, Georgia Project Number: 061–HD067/GA06–Q981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2001.

Reason Waived: Higher construction costs have substantially increased the cost of the project, the Sponsor exhausted all efforts to obtain additional funding from other sources, the project is economically designed and comparable to other similar projects developed in the area.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Wolcott Senior Housing, Wolcott, Connecticut, Project Number: 017–EE052/CT26–S991–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of

approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 25, 2001.

Reason Waived: Higher construction costs have substantially increased the cost of the project, the Sponsor exhausted all efforts to obtain additional funding from other sources, the project is economically designed and comparable to other similar projects developed in the area.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* Section 891.100(d).

Project/Activity: The Margaret C. Love House, Vineyard Haven, Massachusetts, Project Number: 023–EE097/MA06–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2001.

Reason Waived: The location of the project on Martha's Vineyard resulted in additional development costs due to the need to ship construction materials to the property, the project is modest in design and the Sponsor/Owner secured additional funding in the amount of $198,133.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Our Savior's Manor, Westland, Michigan, Project Number: 044–EE071/MI28–S000–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 26, 2001.

Reason Waived: The Sponsor exhausted all efforts to obtain additional funding from other sources, the project is comparable to other similar projects developed in the area and is economically designed.

Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.100(d).

Project Activity: North Haven Elderly Housing, North Haven, Connecticut, Project Number: 017–EE051/CT26–S991–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: Higher construction costs have substantially increased the cost of the project, the Sponsor exhausted all efforts to obtain additional funding from other sources, and the project is comparable to other similar projects developed in the area.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Inglis Gardens at Evesham, Evesham Township, New Jersey, Project Number: 035–HD040/NJ39–Q981–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: Delays by the original Sponsor, the requirement to use Davis-Bacon wage rates, and the limited availability of contractors to build the project have attributed to higher construction costs.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Morrow Woods, Mt. Gilead, Ohio, Project Number: 043–EE068/OH16–S991–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 2, 2001.

Reason Waived: It would be more economically feasible to change the design and develop the project as two-story elevator buildings, the project is comparable to other projects in the area, and the Sponsor has exhausted all efforts to find additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Clair House Senior Housing, Chicago, Illinois, Project Number: 071–EE150/IL06–S991–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 7, 2001.

Reason Waived: The project is economically designed, comparable to other projects developed in the area, and the Sponsor has exhausted all efforts to obtain funds from other sources.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Homes Anew, Suffolk County, New York, Project Number: 012–HD095/NY36–Q991–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: The Sponsor was unable to obtain additional funds other than the full exemption of property taxes, and the project is economically designed and comparable to other projects developed in the area.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: NE 6th Street—Estacada, Estacada, Oregon, Project Number: 126–EE031/OR16–S991–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2001.

Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and all efforts to secure additional funds through other sources have been exhausted.

Contact: Evelyn Berry, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2483.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: TELACU San Bernardino, San Bernardino, California, Project Number: 143–EE040/CA43–S001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2001.

Reason Waived: The City imposed high fees and rising construction costs substantially increased the cost of the project, and the Sponsor exhausted all efforts to find additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Holiday Drive Place, Kansas City, Missouri, Project Number: 084–HD034/MO16–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 28, 2001.
Reason Waived: The project is economically designed, comparable to other projects in the area; the Sponsor cannot contribute any additional funds and has exhausted all efforts to obtain additional funding from other sources.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Friendly Temple Elderly Apartments, St. Louis, Missouri, Project Number: 085–EE051/MO36–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 29, 2001.
Reason Waived: The construction cost of the project was reduced to the maximum extent possible to achieve cost savings, the project was economically designed, comparable to other projects in the area, and the Sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Oxford Trace Apartments, San Antonio, Texas, Project Number: 115–HD028/TX59–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: The project was economically designed, comparable to other projects in the area, and the Sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mt. Gilead Estates, Mt. Gilead, Ohio, Project Number: 043–HD038/OH16–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 2, 2001.
Reason Waived: It was more economically feasible to change the design and develop the project as two-story elevator buildings, the project was comparable to other projects in the area, and the Sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.130(b).
Project/Activity: Shirley Bridge Bungalows, West Seattle, King County, Washington, Project Number: 127–HD027/WA19–Q001–002.
Nature of Requirement: Section 891.130(b) prohibits an identify of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team members or between development team members.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 28, 2001.
Reason Waived: (Seattle Housing Authority SHA) is providing very favorable lease terms to the project, it is difficult to obtain a Management Agent that will accept a small number of units to manage, and that SHA acting as both the Management Agent and the lesser of the land does not violate applicable state and local conflict of interest laws governing nonprofit corporations.
Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2473.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Westminster Scotlandville, Baton Rouge, Louisiana, Project Number: 064-EE105/LA48-S991–007.
Nature of Requirement: Section CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 8, 2001.
Reason Waived: Additional time is needed to process the Firm Commitment application, the extremely poor condition of the site resulted in additional project cost and the Owner is unable to obtain the additional funds from other sources.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Gene Gilbert Manor, Albuquerque, New Mexico, Project Number: 116–HD011/NM16–Q981–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 7, 2001.
Reason Waived: Delays were caused by the developer trying to locate additional funds for construction, the project is economically designed, comparable to other similar projects developed in the jurisdiction and the Sponsor/Owner is unable to obtain the additional funds from other sources.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Dr. A.C. Novello Senior Housing, Bronx, New York, Project Number: 012–EE252/NY36–S981–008.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: The project was required to repeat the City of New York's extensive Uniform Land Use Review Process (ULURP) requirements in order to have a ''community use'' deed restriction removed. Also, the project is economically designed, comparable to other similar projects developed in the jurisdiction and the Owner is unable to obtain the additional funds from other sources.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Volunteers of America (VOA) Estacada, Estacada, Oregon, Project Number: 126–EE031/OR16–S991–003.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 5, 2001.
Reason Waived: The project experienced delays due to wetland and site drainage issue.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Hale Noho, Kaneohe, Hawaii, Project Number: 140–HD022/HI10–Q991–003.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 19, 2001.
Reason Waived: Additional time needed to review the closing documents.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ray Rawson Villas (also known as Las Vegas Supportive Housing, Inc.) Las Vegas, Nevada, Project Number: 125–HD064/NV25–Q971–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: The Sponsor had to raise significant local funds for the additional construction costs due to the construction boom in the Las Vegas area, and the project architect was forced to withdraw due to ill health.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Cedar Street Senior Apartments, Garberville, Humboldt County, California, Project Number: 121–EE118/CA39–S981–011.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 31, 2001.
Reason Waived: The Sponsor/Owner experienced difficulty locating a qualified contractor and incurred additional delays trying to resolve legal problems and issues raised by the Town of Garberville.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.
Project/Activity: John Butterworth Estates (aka ASI—Reno), Reno, Washoe County, Nevada, Project Number: 125–HD066/NV39–Q981–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 29, 2001.
Reason Waived: Escalating construction costs in the area made it difficult for the Sponsor/Owner to locate a qualified contractor who would construct the project within the fund reservation amount.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Beacon Housing, Pasadena, California, Project Number: 122–EE137/CA16–S981–006.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: Zone change amendments, changes in architect and the expiration of site options caused delays in construction start.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Casa de Paz Apartments, Project Number: 122–HD116/CA16–Q981–008.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: The project required additional funding from two different sources and the approval process took nearly a year.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Santa Monica Accessible Apartments, Santa Monica, California, Project Number: 122–HD066/CA16–Q951–004.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: Delays in the construction start were beyond the control of the Sponsor.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: St. Paul Elder Housing Development, St. Paul, Minnesota, Project Number: 092–EE060/MN46–S991–004.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 4, 2001.
Reason Waived: The project experienced delays due to poor soil conditions, which required the Sponsor to come up with a cost effective foundation system for the building.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Sumac Trail Apartments, Rhinelander, Michigan, Project Number: 075–HD050/WI39–Q971–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: Additional time needed for the architect to correct plan deficiencies in the firm commitment application.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Valentino Square, Greenfield, Wisconsin, Project Number: 075–EE077/WI39–S981–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2001.

Reason Waived: More time was needed by the Field Office to review the firm commitment application.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Elders Place II, Philadelphia, Pennsylvania, Project Number: 034-EE086/PA26-S981–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2001.

Reason Waived: The owner is experiencing difficulty in obtaining a building permit.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Las Vegas, North Las Vegas, Nevada, Project Number: 125–EE111/NV25–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: Additional time needed to complete the initial closing.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Joy Senior Apartments, Petersburg, West Virginia, Project Number: 045–EE012/WV15–S981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 12, 2001.

Reason Waived: Additional time is needed because the project incurred delays due to the Owner having to obtain secondary financing, purchase an additional strip of land and resolve legal concerns with an Access Easement and Maintenance Agreement

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Riley Cheeks House, District of Columbia, Project Number: 000–HD030/DC39–Q961–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2001.

Reason Waived: The project is being delayed because the Sponsor has to finalize another secondary funding source since the city no longer has HOME funds available.

Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Flury Place, Elkridge, Maryland, Project Number: 052–HD034/MD06–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2001.

Reason Waived: An easement is required to provide public sewer to the property and the Sponsor is in the process of drafting the easement for execution by all parties.

Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2473.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Atlantic County Independent Living Complex, Mays Landing, New Jersey, Project Number: 035–HD042/NJ39–Q981–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 11, 2001.

Reason Waived: Additional time is needed when it was discovered prior to initial closing that the survey and surveyor's report had to be updated and that it took a period of time to accomplish because the surveyor was recovering from a serious injury.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Summerdale Court, Clairton, Pennsylvania, Project Number: 033–HD039/PA28–Q971–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: Additional time is needed for the Owner to prepare and HUD to process the Firm Commitment application in order for the project to reach initial closing.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NC Orange Senior Housing Corporation, Orange, Essex County, New Jersey, Project Number: 031–EE048/NJ39–S981–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2001.

Reason Waived: Additional time is needed for the Federal Home Loan Bank to reissue documentation (destroyed in the attack on the World Trade Center) of the $250,000 in secondary financing being provided to the project.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Castle Court at Concord Village, Poughkeepsie, New York, Project Number: 012–EE246/NY36–S981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: The project encountered lengthy delays as a result of the Owner's efforts to locate additional funds to cover construction costs, secure local zoning and environmental approvals and negotiate a feasible construction budget.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Haven Senior Housing, North Haven, Connecticut, Project Number: 017–EE051/CT26–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: The project experienced significant delays due to the lengthy price negotiations caused by an increase in construction costs throughout the state.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Inglis Gardens at Evesham, Evesham Township, New Jersey, Project Number: 035–HD040/NJ39–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: Additional time needed to process the Firm Commitment application and for the initial closing to take place.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Lake Elderly Apartments, Pittsburgh, Pennsylvania, Project Number: 033–EE101/PA28–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: The development of the project is experiencing delays while the Owner seeks additional funds to resolve funding shortfalls.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mental Health Care, Brandon, Hillsborough County, Florida, Project Number: 067–HD066/FL29–Q991–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2001.

Reason Waived: The site had to be rezoned.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jubilee Community Development Corporation, Miami, Florida, Project Number: 067–EE071/FL29–S991–016.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2001.

Reason Waived: The Sponsor had to seek an alternate site.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Orlando Volunteers of America (VOA) Elderly Housing, Project Number: 067–EE104/FL29–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: Additional time needed to process the Firm Commitment application.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Boniface Gardens, Pembroke, Florida, Project Number: 066–EE074/FL29–S991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2001.

Reason Waived: Additional time is needed because the project has experienced delays in the construction start due to the Sponsor being required to have the site rezoned and re-platted.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Urbanite Apartments, Project Number: 071–HD022/IL06–Q921–009, Chicago, Illinois.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 2001.

Reason Waived: Additional time was needed because in the midst of processing the firm application, the City of Chicago requested changes to the redesign and the situation of the building on the site, the City took a long time to review the plans.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Birmingham, Alabama, Project Number: 062–HD041/AL09–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 18, 2001.

Reason Waived: The Sponsor/Owner had difficulty locating an alternate site and additional time is needed to resolve zoning issues.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: National Church Residences, Inc., Orlando, Orange County, Florida, Project Number: 067–EE101/FL29–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2001.

Reason Waived: Additional time is needed for the owner to correct architectural and engineering deficiencies in the firm commitment application.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Montclair Senior Housing, Montclair, New Jersey, Project Number: 031–EE051/NJ39–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 2001.

Reason Waived: Schedule conflicts prevented the project from closing on the planned date.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Home For Life (HFL) Ashtabula Homes, Pasadena, California, Project Number: 122–HD117/CA16–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2001.

Reason Waived: The Sponsor/Owner had to hold numerous meetings to address concerns raised by the community and local opposition caused delays in obtaining the necessary documents to develop the project.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Montclair Senior Housing, Montclair, New Jersey, Project Number: 031–EE051/NJ39–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 2001.

Reason Waived: Schedule conflicts prevented the project from closing on the planned date.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Inc. (ASI) Jackson County, Phoenix, Arizona Project Number: 126–HD028/OR16–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2001.

Reason Waived: Additional time needed for extensive environmental studies and a public comment period in order for the Sponsor to receive HOME funds.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: G.R. Vale Home, Montclair, New Jersey, Project Number: 045–HD030/WV15–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 2001.

Reason Waived: The Sponsor received approval to change sites for the project on June 14, 2001, and is in the process of providing justification to change the project from a group home to an independent living project.

Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2473.

• *Regulation:* 24 CFR 891.165.

Project/Activity: A Project Number: 014–HD066/NY06–Q971–013.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 19, 2001.

Reason Waived: The Sponsor received approval to change sites for the project on June 14, 2001, and is in the process of providing justification to change the project from a group home to an independent living project.

Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2473.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Delaware House, Cocheton, Sullivan County, New York, Project Number: 012–HD081/NY36–Q981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2001.

Reason Waived: The Sponsor/Owner experienced difficulty locating a qualified contractor and incurred additional delays trying to resolve legal problems and issues raised by the Town of Garberville.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2696.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Morse Manor Apartments, Morse, Louisiana, Project Number: 064–EE066.

Nature of Requirement: Section 891.410(c) limits occupancy to very low-income elderly persons, i.e., households of one or more persons and at least one of the persons must

be 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 10, 2001.

Reason Waived: The waiver was granted due to the project's inability to maintain sustained occupancy. The property only has 12 units occupied to date despite the management agent's extensive outreach and marketing to attract eligible individuals. Since the current occupancy level will not support the complex, the owner/management agent was granted permission to waive the elderly and very low-income requirement to alleviate the current occupancy and financial problems at the property.

Contact: Veronica C. Lewis, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2597.

IV. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restricturing (OMHAR)

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
12335102	Catalina Square Apartments.	AZ
04235037	Central Park Place	OH
06335178	Cerny Village Apartments.	FL
05335671	Cherry Hotel I & II	NC
08335264	Directions Apartments	KY
05435433	Druid Hills Apartments	SC
04335213	Focus 45	OH
05235351	Montpelier-Kennedy Apartments.	MD
10335074	North Omaha Homes ...	NE
07390014	Parkwood Apartments	IN
06535272	The Village Apartments	MS
05435397	Wisewood Apartments	SC

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: November 27, 2001.

Reasons Waived: The attached list of projects was not assigned to the PAEs in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone: (202) 708–0001, extension 3517.

V. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Waiver request and extension of grant term for Fiscal Year 1998 Public and Indian Housing Drug Elimination Program (PIHDEP) for the Spokane Indian Housing Authority (SIHA), Wellpinit, WA.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: The SIHA has actively pursued implementation of the approved activities. The SIHA will continue to have a positive impact in the community. The continuation of the 1998 PIHDEP will ensure completion of the ''Youth Wellness Opportunity Center'' activities and provide youth with positive alternatives to crime.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program, Office of Native American Programs, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

• *Regulation:* 24 CFR 902.60.

Project/Activity: The New York City Housing Authority, New York, New York, requested an extension of the deadline set by § 902.60 for public housing authorities (PHAs) to submit their fiscal year-end financial information and management operation information.

Nature of Requirement: Section 902.60 of HUD's Public Housing Assessment System regulations provides that a PHA that must submit its fiscal year-end financial information and management operation information not later than two months after the end of the PHA's fiscal year.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, the New York City Housing Authority was unable to submit its financial information and management operation information by the deadline set by the regulation, and requested an extension. An extension was granted.

Contact: Karen Newton, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1141.

• *Regulation:* 24 CFR 902.68

Project/Activity: The New York City Housing Authority, New York, New York, requested an extension of the deadline set by § 902.68 for public housing authorities (PHAs) to request a technical review of the physical inspection results of their public housing.

Nature of Requirement: Section 902.68 of HUD's Public Housing Assessment System regulations provides that a PHA that wishes a technical review of the physical inspection results of the PHA's public housing must submit its request no later than 15 days following the issuance of the physical inspection results to the PHA.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, the New York City Housing Authority was unable to submit its request within the deadline set by the regulation, and requested an extension. An extension was granted.

Contact: Karen Newton, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1141.

• *Regulation:* 24 CFR 903.5.

Project/Activity: The New York City Housing Authority, New York, New York, requested an extension of the deadline established in § 903.5 for public housing authorities (PHAs) to submit its Public Housing Agency Plan.

Nature of Requirement: Section 903.5 provides that a PHA must submit its Public Housing Agency Annual Plan 75 days before the commencement of the PHA's fiscal year.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, the New York City Housing Authority was unable to make submit its plan by the deadline set by the regulation, and requested an extension. An extension was granted.

Contact: Rod Soloman, Office of Deputy Assistant Secretary for Policy Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0713.

• *Regulation:* 24 CFR 972.200.

Project/Activity: The New York City Housing Authority, New York, New York, requested an extension of the deadline established in § 972.200 for public housing authorities (PHAs) to complete their initial assessment of public housing stock.

Nature of Requirement: Section 972.200 establishes the deadline by which PHAs must complete their initial assessment of public housing stock and submit their certification to HUD that the initial assessment has been completed.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, the New York City Housing Authority was unable to complete its initial assessment of public housing stock by the required deadline and requested a 90-day extension for completion and submission, which was granted.

Contact: Rod Solomon, Office of Deputy Assistant Secretary for Policy Program and Legislative initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0713.

• *Regulation:* 24 CFR 983.51(c).

Project/Activity: Housing and Community Development Corporation of Hawaii, Honolulu, HA, project-based assistance program. The Housing and Community Development Corporation of Hawaii requested a waiver to permit it to limit the unit selection policy to site-specific state-owned public housing projects that it planned to privatize. The developments are located in the areas of Kallihi, Waianae, Waipahu and Palolo.

Nature of Requirement: Section 983.51(c) requires that the written selection policy for competitive selection of units to receive project-based assistance identify and specify the weight to be given to the consideration of site and design.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 4, 2001.

Reason Waived: Approval of the waiver minimized the loss of existing low-income housing units.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c); 24 CFR 983.55 (a) and (d).

Project/Activity: Oklahoma City Housing Authority (OCHA), Oklahoma, Oklahoma City, OK, project-based assistance (PBA) program. OCHA requested the waivers to permit it to provide project-based subsidies for 45 units in Pershing Center, a project being developed by CityCare in Oklahoma City to house homeless men and couples. CityCare's Pershing Center application was selected under HUD's 2000 Continuum of Care Homeless Assistance competition. Pershing Center will consist of 60 dwelling units, 45 of which will have PBA attached. The HOME funds and Continuum of Care Homeless Assistance grant funds received for Pershing Center will be used for construction and supportive services and operating expenses.

Nature of Requirement: Sections 983.51(a), (b) and (c) and 983.55(a) and (d) require HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 17, 2001.

Reason Waived: Approval of the waivers will provide supportive housing for formerly homeless men and couples.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: Housing and Community Development Corporation of Hawaii, Honolulu, HA, project-based assistance (PBA) program. Palolo Valley Homes was previously owned by the State of Hawaii and is part of an overall privatization effort of state-owned public housing units. The Department previously granted a waiver to the Housing and Community Development Corporation of Hawaii to attach PBA to Palolo Valley Homes. Housing and Community Development Corporation of Hawaii requested the waiver to permit it to sole source the selection of the developer, Mutual Housing Association of Hawaii (MHAH), which has formed a collaborative effort with the residents of the development to acquire and rehabilitate 306 units. MHAH has already been awarded tax credits through a completive selection process under the State of Hawaii's qualified allocation plan. In addition MHAH has secured financing from the Neighborhood Reinvestment Corporation and the State's Rental Housing Trust Fund toward the rehabilitation effort.

Nature of Requirement: Sections 983.51(a) and (b) require HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 30, 2001.

Reason Waived: Approval of the waiver minimized the loss of existing low-income housing units.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 984.303(b)(2).

Project/Activity: Vermont State Housing Authority, Family Self-Sufficiency (FSS) Program.

Nature of Requirement: The regulation requires public housing agencies (PHAs) to establish an interim goal for families in the FSS contract of participation and the goal must require each family to remain independent from welfare assistance for at least one year before expiration of the term of the FSS contract of participation.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 7, 2001.

Reason Waived: The waiver allowed a highly successful FSS program participant who obtained a career position and no longer needed rental assistance to receive the funds in her FSS escrow account.

Contact: Kathryn Greenspan, Housing Program Specialist, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410; telephone: (202) 708–0744, extension 4055.

• *Regulation:* 24 CFR 985.101.

Project/Activity: The New York City Housing Authority, New York, New York, requested a waiver of the deadline set by § 985.101 to submit its Section 8 Management Assessment Program (SEMAP) certification.

Nature of Requirement: Section 985.101 requires a PHA to submit its SEMAP certification within 60 days after the end of the fiscal year.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, the New York City Housing Authority was unable to submit its certification by the deadline set by the regulation, and requested an extension. An extension was granted.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477, extension 3517.

• *Regulation:* 24 CFR 985.101.

Project/Activity: The City of New York Department of Housing Preservation and Development (HPD), New York, New York, requested a waiver of the deadline set by § 985.101 to submit its Section 8 Management Assessment Program (SEMAP) certification.

Nature of Requirement: Section 985.101 requires a PHA to submit its SEMAP certification within 60 days after the end of the fiscal year.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2001.

Reason Waived: As a result of the events of September 11, 2001, HPD was unable to submit its certification by the deadline set by the regulation, and requested an extension. An extension was granted.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477, extension 3517.

• *Regulation:* 24 CFR 1000.214.

Project/Activity: Waiver request for late submission of the Indian Housing Plan (IHP) for the Pinoleville Indian Reservation, Ukiah, CA.

Nature of Requirement: Section 1000.214 provides that recipients must initially send the IHP to the Area Office of Native American Programs (ONAP) no later than July 1. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996.

Granted By: Michael Liu, Office of the Assistant Secretary, Public and Indian Housing.

Date Granted: October 9, 2001.

Reason Waived: The IHP for Fiscal Year 2001 was received by the Southwest ONAP on July 3, 2001, two days after the regulatory

deadline. The Tribe indicated that the IHP was submitted late due to the resignation of the Housing Director and emergency medical situations.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

- *Regulation:* 24 CFR 1000.312.

Project/Activity: Request to waive the regulatory requirement to remove demolished 1937 Act Housing Units from formula current assisted stock under the Indian Housing Block Grant for the Turtle Mountain Tribe, Belcourt, ND.

Nature of Requirement: Section 1000.312 provides that current assisted stock consists of housing units owned or operated pursuant to an Annual Contributions Contract. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form.

Granted By: Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: October 27, 2001.

Reason Waived: The units were found by the Centers for Disease Control Preservation, the Indian Health Service and HUD's Real Estate Assessment Center to have black mold that would pose a severe health and safety problem to the occupants. These units will be demolished and replaced using non-1937 Act funds.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

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Federal Register

Tuesday,
April 23, 2002

Part X

Department of Transportation

Federal Railroad Administration

49 CFR Parts 216 and 238

Passenger Equipment Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 216 and 238

[FRA Docket No. PCSS–1, Notice No. 7]

RIN 2130–AB48

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to certain of the petitions for reconsideration of FRA's May 12, 1999 final rule establishing comprehensive Federal safety standards for railroad passenger equipment. This document clarifies and amends the final rule.

EFFECTIVE DATE: The amendments to the final rule are effective June 24, 2002.

FOR FURTHER INFORMATION, CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6300); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6026); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1996, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group (Working Group), FRA published a Notice of Proposed Rulemaking (NPRM) on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and advice from its Working Group in preparing a final rule establishing comprehensive safety standards for railroad passenger equipment, which was published on May 12, 1999. *See* 64 FR 25540.

Following publication of the final rule, parties filed petitions seeking FRA's reconsideration of requirements in the rule. These petitions principally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration concerning the final rule's requirements for the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other related, miscellaneous provisions. *See* 65 FR 41284. FRA is hereby responding to all remaining issues raised in the petitions for reconsideration other than those issues concerning the fire safety portion of the final rule. This notice also clarifies the final rule in response to other issues and requests for interpretation that have arisen since publication of the rule. The amendments contained in this notice generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and options discussed, considered, or raised in the NPRM. FRA will address the issues raised in the petitions for reconsideration concerning fire safety by separate notice in the **Federal Register**.

The specific issues and recommendations raised by the petitioners and FRA's response to those petitions are discussed in detail in the ''Section-by-Section Analysis'' portion of the preamble, below. The section-by-section analysis also contains a detailed discussion of each provision of the final rule which FRA has clarified or amended. This will enable the regulated community to more readily compare this document with the preamble discussions contained in both the final rule and the July 3, 2000 response document, and will thereby aid in understanding the requirements of the rule.

Section-by-Section Analysis

Amendments to 49 CFR Part 216

FRA is revising §§ 216.17 and 216.23 to correct typographical errors resulting from the final rule's amendments to part 216. These occurred when the phrase ''the FRA Regional Administrator'' was substituted throughout this part for the phrases ''the FRA Regional Director for Railroad Safety,'' ''the FRA Regional Director of Railroad Safety,'' ''a Regional Director,'' and ''the Regional Director.'' For a discussion of FRA's amendments to this section, *see* 64 FR 25575.

Amendments to 49 CFR Part 238

Subpart A—General

Section 238.1 Purpose and Scope

FRA has amended this section by restoring paragraphs (c)(1)–(3) of the May 12, 1999 final rule. *See* 64 FR 25661. These paragraphs were unintentionally omitted from the rule when FRA amended paragraph (c) in the July 3, 2000 petition for reconsideration response document. *See* 65 FR 41305.

Section 238.3 Applicability

Following publication of the final rule, an issue arose involving the circumstances in which a railroad may use the exclusion from the requirements of the rule applicable to ''tourist, scenic, historic, or excursion operations,'' as specified in paragraph (c)(3). The issue concerned whether a train consisting of new passenger equipment could be operated with passengers (principally business and government officials) for demonstration purposes without complying with the requirements of the rule. As FRA explained, such a train operation is subject to the requirements of the rule and does not fall under the exclusion in paragraph (c)(3). FRA is amending the definition of ''tourist, scenic, historic, or excursion operations'' in § 238.5 to clarify this point, as discussed below.

Section 238.5 Definitions

FRA is amending the definition of ''in service'' to make clear that passenger equipment is ''in service'' when it is in passenger or revenue service in the United States. See the discussion of § 238.201, below, for an explanation of this clarification. FRA has also made a conforming change to this definition by substituting section ''238.305(d)'' for section ''238.305(c)(5).'' Section 238.305(c)(5) was amended by the July 3, 2000 response to petitions for reconsideration. *See* 65 FR 41308.

FRA is amending the definition of ''MIL–STD–882C'' to remove the ''C'' designation. The final rule cited MIL–STD–882C as a formal safety methodology to guide railroads in identifying and then eliminating or reducing the risk posed by a hazard to an acceptable level. MIL–STD–882 was updated on February 10, 2000, and designated as MIL–STD–882D, superceding MIL–STD–882C. (FRA has

placed a copy of MIL–STD–882D in the public docket for this rulemaking.) This amendment makes clear that a railroad may use MIL–STD–882D.

FRA is removing the definition of ''monocoque'' and adding the new definition ''semi-monoque'' in its place. The term ''semi-monocoque''—not ''monocoque''—was expressly used in the final rule text. Further, the definition of ''monocoque'' in the final rule actually described a ''semi-monocoque'' structure by stating that the shell or skin acts as a single unit ''with the supporting frame'' to resist and transmit the loads acting on the structure. Reliance on the supporting frame to help resist and transmit loads–as opposed to resisting and transmitting loads on the shell or skin alone—makes a structure ''semi-monocoque,'' and FRA has clarified the rule accordingly.

FRA is amending the definition of ''tourist, scenic, historic, or excursion operations,'' as noted above. As defined in § 238.5 of the final rule, ''tourist, scenic, historic, or excursion operations'' means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.'' FRA recognizes that a train consisting of new passenger equipment that is operated for demonstration purposes is seemingly not conveying passengers to a particular destination as its principal purpose. However, the very usage of new passenger equipment, as opposed to antiquated equipment, and the clear business purposes of the train, distinguish such demonstration train operations from the class of train operations FRA intended to exclude from the requirements of the rule under § 238.3(c)(3). Any person wishing to operate such a demonstration train that does not comply with a requirement of the rule must file a request for a waiver and obtain FRA's approval on the waiver request prior to commencing the demonstration train's operation.

Section 238.15 Movement of Passenger Equipment With Power Brake Defects

FRA is modifying the requirements in paragraph (e)(2) that concern the movement of a passenger train with inoperative power brakes on the front or rear vehicle in instances where a handbrake on such a vehicle may not be accessible to a member of the train crew or may be located outside the interior of the vehicle. In the final rule, paragraph (e)(2)(ii) required that the train be operated at ''restricted speed not to exceed 20 mph,'' as one of the restrictions imposed on such movements. *See* 64 FR 25667. Following publication of the final rule, the National Railroad Passenger Corporation (Amtrak) raised the concern that the phrase ''restricted speed not to exceed 20 mph'' has a specific meaning which is different from simply stating that the ''speed . . . shall be restricted to 20 mph or less,'' as used in paragraph (d)(2)(ii). FRA did not intend that the speed restriction in paragraph (e)(2)(ii) be different than the one specified in paragraph (d)(2)(ii), and FRA believes that the way in which the speed restriction is stated in paragraph (d)(2)(ii) more accurately reflects FRA's intent. Consequently, for consistency and to avoid confusion, FRA has amended paragraph (e)(2)(ii) to state that the speed of the train shall be restricted to 20 mph or less.

Subpart B—Safety Planning and General Requirements

Section 238.105 Train Electronic Hardware and Software Safety

This section applies to electronic systems, subsystems and components used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and to such systems, subsystems and components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002. Inclusion of these requirements in passenger equipment reflects the growing role of automated systems to control or monitor passenger train safety functions. For example, most new locomotives are controlled by microprocessors that respond to operator commands while making numerous automatic adjustments to locomotive systems to ensure efficient operation. FRA has renamed this section ''Train electronic hardware and software safety'' since the focus of this section is on electronic hardware and software—not on all hardware components as the term is generically used.

In its petition for reconsideration, the American Public Transportation Association (APTA) requested that the term ''materially modified'' be specifically defined for purposes of the application of this section. APTA suggested that hardware or software used to control or monitor safety functions in passenger equipment is ''materially modified'' in at least the following circumstances: when microprocessor-based hardware components are added; and when changes are made to existing microprocessor-based hardware components that provide the vehicle with a new safety-related capability, or safety-related functionality, or both. APTA cautioned that the definition should distinguish between software changes of a minor nature that have no safety impact and significant software changes, modifications, or upgrades that could have a safety impact. APTA believed that, through its requested clarifications to this section, railroads could implement minor software upgrades without triggering the full requirements of this section.

FRA agrees that hardware or software used to control or monitor safety functions in passenger equipment is ''materially modified'' when microprocessor-based hardware components are added to the passenger equipment, and when changes are made to existing microprocessor-based hardware components that provide the vehicle with a new safety-related capability, or safety-related functionality, or both. FRA also believes that the term encompasses significant software changes, modifications, or upgrades that could have a safety impact. For instance, revision of executive software has the potential to fundamentally affect the safety-relevant characteristics of a system. Although FRA does not suggest that every ''patch'' designed to address an error or vulnerability would subject a system to this section's requirements, significant revision of code that alters the basic logic or protocols of the system should prompt a safety review. When a review is required, a railroad must examine the safety risks resulting from a change to the hardware and software components used in monitoring or controlling safety functions, including new risks not previously present and existing risks whose nature is affected by the change.

FRA recognizes that the requirements of § 238.105 lend themselves best to the design, analysis, and testing of hardware and software components used to control or monitor safety functions in new passenger equipment. A formal safety program is necessary to ensure the compatibility and safety of all the various hardware and software components used to control or monitor safety functions in newly constructed equipment. FRA does not intend that the material modification of an existing hardware or software component used to control or monitor safety functions in passenger equipment result in the analysis and testing of all such components in the equipment to the same extent as if the equipment were newly constructed. To the extent risk can be partitioned through preliminary analysis, the focus of the analysis and testing required by a ''material modification'' is placed on the

materially modified component, the safe operation of the component in controlling or monitoring a safety function, and the compatibility of that component with the existing infrastructure, including whether the modification affects the safe operation of other components that control or monitor safety functions.

FRA notes that the issue APTA has raised is similar to one facing FRA in a rulemaking on Standards for Development and Use of Processor-Based Signal and Train Control Systems, published as an NPRM on August 10, 2001. *See* 66 FR 42352; Docket No. FRA–2001–10160. Through the rulemaking, FRA seeks to ensure the safety of processor-based signal and train control systems in light of rapid and significant changes in locomotive design. FRA is also examining the appropriate relationship between train control systems and locomotive control systems, such as those subject to the requirements of this section. Because the rulemaking is focused on the safety of electronic control systems, it may ultimately lead FRA to amend or clarify the requirements of this section of the Passenger Equipment Safety Standards for purposes of consistency. As a result, FRA expects to consider further the requirements of this section as a whole with the Working Group as part of the second phase of the Passenger Equipment Safety Standards rulemaking.

Following publication of the final rule, an issue was raised as to the application of § 238.105 to cab signal systems. Cab signal systems are governed by 49 CFR part 236 and are affected by the requirements of § 238.105 only to the extent they are commingled with other cab electronic systems (which currently should not be the case). The rulemaking on Standards for Development and Use of Processor-Based Signal and Train Control Systems is specifically devoted to the safety of processor-based signal and train control systems.

FRA also notes that General Electric Transportation Systems (GETS) has raised concern that strict compliance to the requirements of § 238.105 would result in a significant incremental change to the complexity, sophistication, and integrity required for all locomotive safety-related systems which interface with or include a microprocessor. GETS stated that § 238.105(d) of the final rule could be interpreted to mean that any computer involved in safety-related functions must be designed to be ''fail-safe'' or ''vital'' similar to the requirements applied to signal and train control systems in 49 CFR part 236. Further, GETS contended that because the definition of a ''safety-critical'' function includes a function that ''increases the risk of damage to passenger equipment,'' the requirements could be interpreted to mean that any microprocessor that may be utilized for reliability purposes alone must also be designed and implemented in a fail-safe manner. GETS stated that it has conducted a preliminary hazard analysis and functional fault tree on its Genesis locomotive microprocessor-based systems in accordance with the practices and criteria specified in Institute of Electrical and Electronics Engineers, Inc., (IEEE) Standard 1483, ''Standard for the Verification of Vital Functions in Processor-Based Systems Used in Rail Transit Control.'' GETS cited these as standard tools employed throughout the rail and transit industries for many years, and believed that they constitute an equivalent, alternate approach for applying a ''formal safety methodology'' to the hardware and software safety program specified in paragraph (b). GETS also noted that it has completed Failure Modes and Effects Analyses (FMEA's). GETS further stated that it has a comprehensive and robust process for designing, developing, and testing software used in safety-related applications. It explained that this process includes well-defined software design requirements, quality assurance practices, and exhaustive pre-revenue verification and validation testing. In addition, GETS stated that formal technical reviews are conducted as necessary at various phases in the software development program including during development of the software specifications, the software design document, the software test plan, and as part of the line-by-line code review. According to GETS, these software design, development, and verification and validation practices have produced highly reliable microprocessor-based systems that have proven to be safe and effective with hundreds of P42 locomotive-years and over 100 million miles in revenue service. GETS suggested that consideration be given to accepting the current, proven microprocessor-based systems as implemented, and limiting the new requirements for software vitality to the next generation or the introduction of new technology train control systems, consistent with the rulemaking on Standards for Development and Use of Processor-Based Signal and Train Control Systems.

As stated in the final rule, paragraph (c) provided in part that software that controls or monitors safety functions be considered safety-critical unless a completely redundant, failsafe, non-software means ensuring the same function is provided. Paragraph (d) required that hardware and software that controls or monitors passenger equipment safety functions include design feature(s) that result in a safe condition in the event of a hardware or software failure. *See* 64 FR 25671. FRA is aware of specific electronic system failures that have occurred on passenger and freight locomotives that have presented safety concerns. As manufacturers intensify use of commercial off-the-shelf operating systems and attempt greater integration of on-board functions (including eventually train control), the potential for uncovered hazards will increase unless action is taken to ensure greater rigor in safety analysis and testing before products are brought to market.

However, on reconsideration, FRA agrees that this language is unnecessarily broad in requiring that all hardware and software that controls or monitors passenger equipment safety functions in effect be designed to fail safely in the event of a hardware or software failure. Consequently, FRA has amended this section by deleting the first sentence in paragraph (c) and by amending paragraph (d) to focus the requirement for vitality or functional redundancy on two key systems. First, hardware and software that controls or monitors a train's primary braking system shall fail safely by initiating a full service brake application in the event of a hardware or software failure; or access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer. In the preamble to the final rule, FRA explicitly stated that in the case of primary braking systems, electronic controls must either fail safely (resulting in a full service brake application) or access to full pneumatic control must be provided. *See* 64 FR 25591. Second, hardware and software that controls or monitors the electronic ability to shut down the main power and fuel intake system shall either fail safely by shutting down the main power and intake of fuel in the event of an uncovered system failure; or the ability to shut down the main power and fuel intake system by non-electronic means shall be provided to the train crew. FRA desires that the train crew have the ability to shut down the main power and fuel intake system in the event of

a collision, derailment, or fire, in particular, to mitigate the consequences of such occurrences. This has long been identified as a safety requirement for fossil-fuel locomotives. *See* 49 CFR § 229.93. Obviously, it may also be critical to be able to reduce power to avoid or mitigate the seriousness of an accident to begin with, regardless of the type of motive power.

FRA notes for clarity that the reference to reliability in paragraph (c), which is retained from the final rule, arises only within the context of systems that control or monitor safety functions, as stated in the initial text of the section. It is important that such systems be available and function as intended, since otherwise they may be circumvented out of expediency. FRA does not intend to address reliability of electronic systems except in this context.

As a separate matter, FRA notes that it has amended paragraph (c) to add the phrase ''hardware and software'' where the word ''software'' previously was written. As paragraph (c) concerns the requirements of a hardware and software safety program, and the software and hardware work as a system, both components of the system should logically be identified together. This arises out of the nature of the systems and merely clarifies the intent of the final rule. FRA has made a similar change to paragraph (b).

Finally, with respect to GETS's suggestion to use IEEE 1483 as a formal safety methodology for purposes of complying with the hardware and software safety program requirements, FRA notes that this IEEE consensus standard developed by the rail transit industry focuses principally on the verification process, which is only an element of the entire hardware and software safety program described in paragraph (b) and required by paragraph (a). As a general matter, IEEE 1483 does not address safety validation; the definition of requirements for safe operation; hazard severity and frequency assessment; hazard causes, effects and resolutions; or system and development design. While use of IEEE 1483 is appropriate for purposes of hardware and software safety verification, its use alone is not sufficient for purposes of complying with the hardware and software safety program requirements in this section. Nonetheless, the steps GETS has described to provide for hardware and software safety in its P42 locomotives indicate that GETS is in at least substantial compliance with the requirements of this section. GETS specifically cited performing failure modes and effects criticality analyses, as well as validation and verification testing—all elements of the hardware and software safety program.

Section 238.109 Training, Qualification, and Designation Program

FRA is amending paragraph (b)(6) to make clear that a railroad may offer to its employees and contractors the option of taking an oral examination—instead of a written examination—covering the equipment and tasks for which they are responsible. As originally promulgated, paragraph (b)(6) stated that such contractors and employees were required to pass a written examination. However, in the preamble to the final rule, FRA explained that paragraph (b) ''requires that employees pass either a written or oral examination.'' *See* 64 FR 25593. Consistent with the preamble discussion, FRA did not intend to restrict a railroad from offering oral examinations to its employees and contractors. Consequently, FRA has amended paragraph (b)(6) of this section to effectuate this intent.

Section 238.111 Pre-Revenue Service Acceptance Testing Plan

This section provides requirements for pre-revenue service testing of passenger equipment and relates to subpart G, which describes requirements for the procurement of Tier II passenger equipment and for a major upgrade or introduction of new technology that could affect a Tier II passenger equipment safety system.

In its petition for reconsideration, Amtrak noted that § 213.345 of the Track Safety Standards already contains an approval process for equipment qualification testing, and that §§ 238.21 and 238.111 require the submission of test plans for FRA approval in the case of Tier II passenger equipment. Amtrak believed that the requirement to submit and obtain approval of pre-revenue service acceptance testing plans could substantially delay equipment testing.

FRA has explained that it desires closer monitoring of Tier II passenger equipment because of safety concerns associated with the higher speeds at which this equipment will travel. Although closer monitoring may lengthen the testing process for this equipment, FRA believes that safety is better and more efficiently promoted by identifying safety concerns prior to placing the equipment in passenger service. While the Track Safety Standards focus on track/vehicle interaction, the plan required by this section permits a broader examination of the equipment's safety. Accordingly, FRA does not believe that a modification of the final rule is warranted. Of course, FRA will reasonably enforce the requirements for submission and approval of test plans. For instance, FRA notes that § 238.111(b)(2) requires that a copy of a test plan be submitted to FRA at least 30 days prior to conducting the testing. This 30-day period is for the benefit of FRA to allow sufficient time to review the test plan and arrange for FRA to witness the testing, as necessary. In some cases the approval, coordination, and testing may be able to be accomplished in less than 30 days.

Section 238.113 Emergency Window Exits

In its petition for reconsideration, APTA requested clarification of four issues concerning this section. First, APTA requested that FRA clarify the meaning of ''main level'' as applied to gallery-type cars such as those operated by the Northeast Illinois Regional Commuter Railroad Corporation (Metra). APTA stated that approximately 30% of the seating capacity of these gallery cars is located in four separate gallery areas. APTA asked whether each of these galleries is a main level, or whether only the lower level of the car—containing 70% of the seating—is a main level. APTA stated that Metra would equip gallery areas with emergency window exits as they buy new cars and as they overhaul existing cars but could not add emergency windows to gallery areas by November 8, 1999.

FRA recognizes that the term ''main level'' was not defined in the final rule. Nor did FRA intend to define ''main level'' strictly based on a percentage of passenger car seating capacity. FRA's use of the term ''main level'' was intended to exclude from the requirements of this section a level of a car that is principally used for passage between the door exits and passenger seating areas, or between passenger seating areas. Such an area is not principally used for seating and includes a stairwell landing between the two main levels of a conventional ''bi-level'' car. A conventional bi-level car has two main levels—an upper and a lower level—that are principally used for passenger seating.

As FRA understands, the Metra cars referenced by APTA are equipped with eight emergency window exits. Four emergency window exits are located on each main level. The four separate gallery areas are located on the upper level of the cars; one gallery area is located on each side of each end of the cars; and each gallery area has one emergency window exit. On this basis, FRA makes clear that the Metra cars are

in compliance with paragraph (a) of this section.

Second, APTA requested that the rule not require emergency window exits to be placed at the ends of a passenger car if staggering the window exits is not practical. APTA believed that, since windows at car ends are more likely to be damaged and rendered unusable in a collision, the rule should provide railroads the flexibility to place window exits at the locations that will most effectively allow for passengers to exit a car in an emergency.

FRA agrees that emergency window exits need to be distributed throughout a passenger car so as to maximize passenger egress in a life-threatening situation. As the discussion in the final rule explains, safety is advanced by staggering the configuration of emergency window exits—instead of placing the exits directly across from each other on opposite sides of the car—and distributing the window exits as uniformly as practical throughout the car. *See* 64 FR 25596. For a main level of a typical passenger car, this can be conceptualized as follows: Divide the car longitudinally into four equal quadrants from the forward (A) end to the rear (B) end; number the quadrants one through four, running from the A end to the B end; place one window in each quadrant; and locate the windows in the first and third quadrants on the opposite side of the car from the windows in the second and fourth quadrants. This represents the optimal placement of emergency window exits on a main level of a typical passenger car, and is required by paragraph (a)(1) where practical. Yet, as FRA noted in the final rule, other considerations may be taken into account, including the need to provide an unobstructed exit without diminishing normal seating capacity. As a result, where staggering is not practical, paragraph (a)(1) would allow the emergency window exits to be placed on opposite sides of the car, directly across from one another, provided at least two emergency window exits are located in each end of the car.

FRA reiterates that use of the term ''in each end'' in paragraph (a)(1) refers to the forward and rear ends of a car as divided longitudinally by its center. This term does not literally refer to the extreme forward and rear ends of a passenger car, nor does it require that emergency window exits be placed at the extreme ends of a car. FRA also reiterates that railroads should be mindful that if the ends of a car crush in a collision, the window exits located at the car's ends may be rendered inoperable. FRA makes clear that paragraph (a)(1) does not require emergency window exits to be placed at the extreme ends of a passenger car.

Third, APTA requested that FRA clarify the meaning of ''unobstructed opening'' in paragraph (b). APTA suggested that an opening is obstructed only if an obstacle prevents or significantly delays the removal of a window, noting that seats and seat backs can help in an evacuation by providing passengers a surface to stand on and hold as they pass through the window. APTA also mentioned that some of the larger emergency window exits weigh more than fifty pounds, and that seat backs provide a surface on which to place these windows safely. Amtrak, in its petition for reconsideration, similarly requested that the term ''unobstructed opening'' be defined to make clear that items such as seat backs that project in front of the window but do not prevent removal of the emergency window do not violate the requirements of this section. Amtrak stated that, since the purpose of this section is to ensure ready access to and easy removal of the windows, objects such as seat backs should be allowed in front of the window opening so long as they do not impair access to and rapid and easy removal of the window in an emergency.

FRA notes that the NTSB, in commenting on the NPRM, stated that emergency window exit dimensions should be based on the dimensions needed: (1) To extricate an injured person from the passenger car; and (2) to allow an emergency responder fitted with a self-contained breathing apparatus to enter the passenger car. *See* 64 FR 25595. FRA agreed with the NTSB and paragraph (b) of the final rule reflects these considerations. The size of the emergency window exit opening cannot be determined solely on the dimensions needed for an able-bodied passenger to exit through a window. Although FRA recognizes that use of a seat back may facilitate the escape of able-bodied passengers through a window, the same seat back may impair the removal of an injured person from the car or block an emergency responder fitted with a self-contained breathing apparatus from entering through the window. Further, the requirements of paragraph (b) only apply to new passenger cars and only require that four windows on each main level be emergency window exits subject to this section's requirements. In consideration of APTA's and Amtrak's concerns, however, FRA is amending the paragraph to make clear that a seat back does not obstruct an emergency window exit opening if the seat back can be moved away from the opening's clearance without requiring the use of a tool or other implement. As a result, a seat back that can be manually reclined away from the minimum required 26-inch by 24-inch emergency window exit opening would not obstruct the opening for purposes of this paragraph.

Finally, APTA requested that FRA clarify the meaning of ''rapid and easy removal'' in paragraph (a)(3). APTA asked if this paragraph requires that the window be designed to permit rapid and easy removal from not only the inside of a passenger car but also from the outside of the car as well. FRA is amending the paragraph to make clear that the emergency window exits required by this section need only be designed to permit rapid and easy removal from the inside of the car without requiring the use of a tool or other implement. As paragraph (a) applies to both new and existing passenger cars, FRA did not intend to require a retrofit of existing passenger cars so that the windows could also be accessed by emergency responders from the outside without requiring the use of a tool or other implement. Nevertheless, pursuant to 49 CFR 223.9(d), each window intended for emergency access by emergency responders for extricating passengers from both new and existing passenger cars must be clearly marked and have clear and understandable instructions posted for its use. In Phase II of this rulemaking FRA will examine with the Working Group the need for requirements concerning the ease of removing passenger car windows from the outside of the car, taking into consideration potential issues and concerns such as the unintentional dislodgement of the windows. FRA does note that, pursuant to § 238.235(b), each powered, exterior side door on a new passenger car must be equipped with a manual override that is designed and maintained so that a person may access the override device from both inside and outside the car without requiring the use of a tool or other implement.

In the final rule, FRA reserved paragraph (c) for emergency window exit marking and operating instruction requirements, which were specified in the Passenger Train Emergency Preparedness final rule, *see* 63 FR 24630. FRA noted that in Phase II of the rulemaking FRA will consider integrating into part 238 the emergency window exit marking and operating instruction requirements specified in the Passenger Train Emergency Preparedness final rule, as well as consider revising the requirements as necessary. While FRA still intends to examine these requirements in Phase II,

FRA has in the interim inserted a reference to the marking and instruction requirements specified in the Passenger Train Emergency Preparedness final rule to make clear that there are marking and instruction requirements and identify where to locate these requirements.

Subpart C–Specific Requirements for Tier I Passenger Equipment

Section 238.201 Scope/Alternative Compliance

Subpart C contains specific requirements for railroad passenger equipment operating at speeds not exceeding 125 mph. In general, except for the static end strength requirements (§ 238.203) and as otherwise provided in this subpart, the requirements of subpart C apply only to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.

Following publication of the final rule, a passenger car builder asked FRA at what point would a railcar, having undergone extensive rebuilding, be considered new and therefore subject to the requirements for new passenger equipment in subpart C. The builder explained that it has torn down and rebuilt passenger cars using all new materials except for their underframes and trucks. FRA makes clear that when a passenger car is torn down to its underframe and rebuilt, the requirements of subpart C do not apply unless otherwise specified (such as in § 238.203). FRA considered the extent to which subpart C should apply to rebuilt passenger cars and generally decided against applying the requirements of the subpart to such rebuilt equipment. *See* 64 FR 25601–2; see also the discussion of the definition ''ordered'' in § 238.5 (64 FR 25577). Nonetheless, FRA has applied specific requirements of the rule to rebuilt equipment, such as the fire safety requirements in subpart B for materials placed in a passenger car during a rebuild (see § 238.103(a)(2)). FRA notes that the builder's question does highlight the concern that even when a car is torn down to its underframe and could be fitted with new or improved structural features, the rule generally does not require that it be done. FRA will examine this concern further in Phase II of the rulemaking.

The builder also asked FRA about the meaning of the term ''placed in service for the first time,'' which is used throughout rule—not only in subpart C—and its effect for purposes of equipment that has previously been placed in service in Canada or another country. FRA makes clear that the necessary implication of the term ''placed in service for the first time'' is that the equipment is placed in service for the first time in the United States. For example, where a requirement applies to passenger equipment placed in service for the first time on or after September 9, 2002, and the railroad desires to purchase passenger equipment operating in a foreign country, that equipment will be considered placed in service for the first time on or after September 9, 2002, if it is placed in service in the United States for the first time on or after this date. Consequently, the equipment will be subject to the requirements of the rule applicable to passenger equipment placed in service for the first time on or after September 9, 2002. As noted above, FRA has amended the definition of ''In service'' in § 238.5 to make this clear. Overall, this clarification is consistent with the pre-revenue service acceptance testing plan requirements in § 238.111, which distinguish between passenger equipment that has previously been used in revenue service in the United States, and that equipment which has not.

Similarly, for purposes of the presumption in § 238.203(b) that passenger equipment placed in service before November 8, 1999, is presumed to comply with the 800,000-pound static end strength requirement in § 238.203(a), the presumption only applies to passenger equipment placed in service in the United States prior to November 8, 1999. The builder had asked whether this presumption applied to passenger equipment operating in Canada prior to this date, and FRA makes clear that it does not. However, FRA believes that typical Canadian passenger equipment would meet the requirements of § 238.203(a).

FRA is only amending § 238.201 to correct a typographical error in paragraph (a)(2). The reference to § 238.203 in paragraph (a)(2) of the final rule was incorrectly stated as ''§ 238.203B.''

Section 238.203 Static End Strength

This section contains the requirements for the overall compressive strength of all Tier I rail passenger equipment, except for equipment meeting the requirements of § 238.201.

In the final rule, FRA included paragraphs (d) through (f) to provide a formalized process for seeking grandfathering approval of passenger equipment in use on a rail line or lines on November 8, 1999, not meeting the minimum static end strength requirements. These paragraphs set forth the content requirements for a petition, service of a petition, and commenting on a petition, as well as the process FRA follows in acting on a petition. FRA notes that, subsequent to the final rule, § 238.203(g) was amended by a December 16, 1999 final rule that revised docket filing procedures for FRA rulemaking and adjudicatory dockets. *See* 64 FR 70193. Yet, the amendments to § 238.203(g) only concerned the procedures for filing comments by interested parties.

In its petition for reconsideration, Amtrak believed that paragraph (h)(1) provided that a hearing must be conducted in connection with all petitions; that this would deviate from the standard specified in FRA's rules of practice at 49 CFR 211.25(a) for convening a hearing; and that no need exists to deviate from this practice. Paragraph (h)(1) provided that FRA will conduct a hearing on a grandfathering petition in accordance with 49 CFR 211.25, which, among other things, states that a hearing will be held if required by statute or the Administrator finds it necessary or desirable. In the case of a petition for grandfathering, a hearing is not required by statute. Consequently, in reading these two sections together, paragraph (h)(1) would not require that a hearing be held on every petition for grandfathering. Nonetheless, FRA has amended the rule to make clear that a hearing will be held on a petition for grandfathering only if the FRA Administrator finds it necessary or desirable.

Further, Amtrak stated that it may be appropriate for the scope of the potential grandfathering of passenger equipment to be modified to permit use of the grandfathered equipment for detour or other emergency operations on a rail line or lines other than the one or ones specifically approved for use without the necessity of a formal waiver being obtained in such an instance. FRA does not agree that the rule should provide such general flexibility to a railroad, as the rule is structured to address the safety of the equipment on a specific rail line or lines. The grandfathering petition may of course address this situation by specifying potential rail lines the equipment may need to use in detour or emergency situations and by seeking approval for use of these rail lines in accordance with the requirements of paragraph (d). Otherwise, FRA will address such a situation on a case-by-case basis.

Finally, Amtrak stated that there is no apparent reason to specify that approved grandfathering petitions are subject to reopening per paragraph (h)(2). The rule provides for the

reopening of approved grandfathering petitions for cause stated so that FRA may retain oversight of grandfathered equipment. For instance, the facts or circumstances underlying the approval of a grandfathering petition may change over time and bring into question whether usage of the equipment continues to be in the public interest and consistent with railroad safety. Paragraph (h)(2) remains unchanged.

As a final matter, for a discussion of the application of the presumption in paragraph (b) to passenger equipment in service in a foreign country before November 8, 1999, see the discussion of § 238.201, above.

Section 238.205 Anti-Climbing Mechanism

This section contains the vertical strength requirements for anti-climbing mechanisms on rail passenger equipment. As stated in the final rule text, paragraph (a) applies to all passenger equipment placed in service for the first time on or after September 8, 2000. 64 FR 25675. However, the section-by-section analysis to the final rule incorrectly stated that paragraph (a) applied to all passenger equipment placed in service for the first time on or after November 8, 1999. 64 FR 25604. FRA makes clear that the September 8, 2000 applicability date as stated in the final rule text is correct.

In its petition for reconsideration of the final rule, APTA asked FRA to reconsider the requirement in paragraph (b) that the forward end of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 200,000 pounds without failure. FRA had explained in the preamble to the final rule that specifying a vertical load resistance requirement for lead vehicles (locomotives) that is greater than that for coupled vehicles is needed to address the greater tendency for override in a collision between uncoupled vehicles. *See* 64 FR 25604. However, FRA recognized that implementing this anti-climbing requirement in the leading structure of cab cars and MU locomotives presented a significant challenge.

In its petition, APTA stated that no car builder had been able to find a means of constructing a cab car or an MU locomotive meeting the anti-climbing requirement in paragraph (b). APTA explained that, due to dissimilar structures on the leading ends of a cab car and an MU locomotive on the one hand, and a conventional locomotive on the other, it is not possible to apply the load in the same manner on these structures. APTA contended that the final rule should not define requirements beyond what has proven to be achievable, and recommended that the current industry practice for anti-climbing mechanisms at the leading ends of cab cars and MU locomotives be retained, *i.e,* the strength requirements provided in paragraph (a).

In a letter to APTA dated September 24, 1999, FRA announced that it would amend the rule to extend paragraph (b)'s compliance dates forward by one year and encouraged APTA to work with equipment builders to identify appropriate design criteria for cab car and MU locomotive anti-climbers within this additional one-year period. (A copy of this letter has been placed in the public docket for this rulemaking.) FRA agreed that the industry needed additional time to perfect practicable designs to meet the requirements of paragraph (b), but was concerned with excluding cab cars and MU locomotives from the requirement. If anything, the need for the requirement is greater in preventing injury in the context of passenger-occupied locomotives (cab cars and MU locomotives), where the engineer is located far forward in the vehicle.

By letter dated November 21, 2000, APTA informed FRA of its progress in achieving a practical design standard. (A copy of this letter has been placed in the public docket for this rulemaking.) APTA explained that at least three car builders proposed strengthening the forward car body structure that supports the coupler, in order to withstand the required vertical loads. APTA stated that Bombardier had proposed meeting this requirement in building MU locomotives for the Long Island Railroad by designing the car body structure to resist an ultimate load of 200,000 pounds applied upward on the buffer beam and downward on the coupler carrier. APTA sought FRA's concurrence on this design approach, maintaining that the approach is consistent with the loading requirements that have traditionally been used to meet a 100,000-pound (to yield) anti-climbing requirement. APTA stated that the industry currently has no other viable options for anti-climbing mechanism designs for cab cars and MU locomotives that would meet the requirements of paragraph (b), and that these vehicles do not lend themselves to the shelf-type anti-climbing mechanisms used on conventional locomotives.

In a letter to APTA dated February 2, 2001, FRA explained that the intent of paragraph (b) was not to focus on strengthening a locomotive's draft arrangement, and therefore FRA could not agree that APTA's approach complied with paragraph (b). (A copy of this letter has been placed in the public docket for this rulemaking.) FRA's intent has been to encourage the use of anti-climbing mechanisms that help to prevent (1) debris from rising toward the cab and passenger compartments in the case of a highway-rail collision and (2) insofar as reasonably possible, any vertical disengagement that could reduce the effectiveness of collision and corner post arrangements (and consequent telescoping) in the case of collisions with other rail equipment. FRA intended to incorporate a feature of Association of American Railroads (AAR) Standard (S) 580 that appeared to be helpful in this regard (along with the requirements for improved collision posts and ½-inch or equivalent steel skin protecting the forward end structure). Conventional freight and passenger locomotives have generally implemented this requirement through use of a horizontal shelf arrangement that protrudes forward of the locomotive. In order to be effective, such an anti-climbing mechanism must be situated on the front of the vehicle in such a way as to encourage capture of the object in danger of rising and be strong enough to contain its rise. Ideally, such an arrangement would tend to interlock with the arrangement on the front of other rail vehicles. Certainly a coupler and drawbar can be helpful, but the capture surface of a coupler is narrow, and the chance of achieving coupling with another vehicle in higher force impacts is not high.

FRA continues to have confidence that incorporation of a separate anti-climbing mechanism on the front of cab cars and MU locomotives is both feasible and warranted. This conclusion is supported in part by successful efforts in rail equipment design internationally. Nonetheless, FRA has accepted the fact that for cab cars and MU locomotives implementation of effective anti-climbing arrangements that comply with paragraph (b) will, in at least some cases, require more elaborate redesign than initially contemplated by FRA. Considering the further work that will be required to develop compliant designs and evaluate their compatibility and effectiveness, FRA has modified the rule to exclude cab car and MU locomotives from the additional forward-end anti-climbing requirements in paragraph (b). Of course, cab car and MU locomotives will continue to be subject to the requirements of paragraph

(a). In Phase II of the rulemaking, FRA looks forward to restoring an appropriate requirement for cab car and MU locomotives, based on research results, continued input from APTA, and consultations with the Passenger Equipment Safety Standards Working Group as a whole.

As a final point, FRA has no objection if a railroad wishes to exceed the traditional minimum standard of 100,000 pounds for the anti-climbing capacity of the coupler carrier and buffer beam. However, FRA has amended paragraph (b) to remove the text stating that its requirements are ''in lieu of the forward end anti-climbing mechanism requirements described in paragraph (a) of this section.'' Because paragraph (a) states that certain tight-lock couplers satisfy the anti-climbing mechanism requirements, the reference to paragraph (a) in paragraph (b) could have led to the misunderstanding that increasing the strength of the coupler would satisfy the requirements of paragraph (b) without the need for a separate anti-climbing mechanism. FRA did not intend such a result. Nevertheless, FRA is not aware of any serious deficiency in the 100,000-pound draft securement requirement, given the function it has typically played in crossing and train-to-train collisions. Existing draft arrangements should be sufficient to prevent override in those cases where coupler engagement is sufficient to arrest vertical movement (up to the strength of the coupler components and the drawbar itself).

Section 238.207 Link Between Coupling Mechanism and Car Body

This section contains the vertical strength requirements for the structure that links the coupling mechanism to the car body for passenger equipment. The purpose of these requirements is generally to avoid a premature failure of the draft system so that the anti-climbing mechanism will have an opportunity to engage. As stated in the final rule text, this section applies to all passenger equipment placed in service for the first time on or after September 8, 2000. 64 FR 25675. However, the section-by-section analysis to the final rule incorrectly stated that this section applied to all passenger equipment placed in service for the first time on or after November 8, 1999. 64 FR 25605. FRA makes clear that the September 8, 2000 applicability date as stated in the final rule text is correct.

Section 238.211 Collision Posts

This section contains the structural strength requirements for collision posts. As stated in the final rule text, paragraph (a) applies to all passenger equipment placed in service for the first time on or after September 8, 2000. 64 FR 25675. However, the section-by-section analysis to the final rule incorrectly stated that paragraph (a) applied to all passenger equipment placed in service for the first time on or after November 8, 1999. 64 FR 25605. FRA makes clear that the September 8, 2000 applicability date as stated in the final rule text is correct.

In its petition for reconsideration, APTA stated that FRA inadvertently changed the requirements of this section in the final rule contrary to FRA's intent and the Working Group's consensus. APTA maintained that consensus was reached for all passenger cars to have two full-height collision posts at each end, as well as not to require collision posts at the rear end of non-passenger carrying locomotives. APTA believed that paragraph (a)(1)(i), as stated in the final rule, would not require collision posts at both ends of any passenger equipment.

FRA has revised paragraph (a)(1) to make clear that collision posts are required at each end of passenger equipment, unless otherwise expressly excepted. In the NPRM, FRA had generally proposed that all passenger equipment have collision posts at each end, *see* 62 FR 49804, and the preamble to the final rule does not at all indicate that FRA had so radically departed from the NPRM as to limit the requirements for collision posts to only one end of passenger equipment. FRA believes that the final rule did require collision posts at each end. Nevertheless, FRA is clarifying the requirements of this section by adding the words ''at each end'' to paragraph (a)(1)(i) to remove any ambiguity.

Further, FRA has generally adopted APTA's request to amend this section to exempt the rear end of non-passenger occupied locomotives from the collision post requirements. FRA acknowledges that in preparing the final rule it seemingly overlooked APTA's comment on the NPRM questioning the need for collision posts at the rear end of non-passenger occupied locomotives. In its comments on the NPRM, APTA stated that such collision posts could simply have the effect of adding weight to locomotives without providing any additional protection to the crew, and that no evidence had been presented that crewmembers of non-passenger carrying locomotives have been harmed by trailing passenger coaches overriding such locomotives from the rear. In addition, APTA had commented that passengers in a coach overriding the rear of a locomotive may be provided more protection by allowing the coach's collision posts to deform the rear of the locomotive, thereby absorbing and dissipating collision energy.

FRA has amended this section to provide that collision posts are not required at the rear end of a locomotive that is designed to be occupied only at its forward end. As a result, rear collision posts will continue to be required on an MU locomotive and a cab car, as well as on any locomotive designed to be occupied at the rear. In the case of a conventional passenger locomotive designed only to be occupied at its forward end, rear collision posts will not be required for Tier I operations at this time. Nevertheless, FRA notes that, in considering occupant protection strategies for such locomotives, the focus of any collision post requirement should be on the rear end of the locomotive cab-not the rear of the locomotive in its entirety-as provided for Tier II passenger equipment in § 238.411(b). (The locomotive cab is the volume normally occupied by the train crew in a locomotive.) As noted in the final rule, structural requirements for locomotives are also being considered in the Locomotive Crashworthiness Working Group of FRA's RSAC, and FRA expects further advances in locomotive crashworthiness safety to result from this separate proceeding.

Section 238.219 Truck-to-Car-Body Attachment

This section contains the truck-to-car-body attachment strength requirements for Tier I passenger equipment. The final rule required the attachment to resist without failure a 2g vertical force on the mass of the truck and a force of 250,000 pounds acting in any horizontal direction on the truck.

APTA, in its petition for reconsideration, stated that the requirement for the vertical and horizontal forces to be applied simultaneously on the truck (as explained in the preamble to the final rule) is not the industry practice and was never discussed at Working Group meetings. Accordingly, APTA believed that this requirement should not be included in the final rule without having input from the industry regarding its feasibility and impact. APTA stated that no truck-to-car-body attachments are designed to meet this requirement and cited potential operational and economic impacts that may result if any new equipment ordered would be incompatible with existing equipment as a result of this requirement. APTA disagreed with FRA's reasoning for this requirement, as

stated in the preamble to the final rule, that ''[r]equiring the truck-to-car-body attachment to resist the vertical and horizontal forces applied at the same time reflects actual conditions experienced during a collision or derailment.'' (See discussion of § 238.419, the Tier II counterpart to § 238.219, at 64 FR 25634.) APTA maintained that the industry has always applied these loads separately because each load case addresses a different scenario. According to APTA, the 2g load criterion is typically used to ensure that the truck remains with the car body when it is lifted and is not intended for a collision scenario; whereas, the 250,000-pound horizontal load requirement is the principal strength criterion that has historically been applied to passenger equipment to keep the truck with the car body in a collision scenario. To meet the latter criterion, APTA explained that the vertical reaction to the load must also be considered in the analysis to ensure that the truck does not separate vertically. APTA therefore recommended that FRA address this reaction instead of addressing the 2g vertical and 250,000-pound horizontal loads together.

Similarly, in discussing § 238.419 in its petition for reconsideration, Amtrak believed the final rule to be inconsistent with long-standing industry practice by requiring that the 2g vertical and 250,000-pound horizontal loads be applied simultaneously. Further, Bombardier raised concerns similar to APTA's and Amtrak's in discussing § 238.419 in its petition for reconsideration. Bombardier noted in particular that since the 2g vertical load criterion is intended to keep the truck safely attached to the car body when lifted, the criterion is typically based on yield strength rather than on ultimate strength.

FRA agrees with the petitioners that the 2g vertical load and the 250,000-pound horizontal load on the truck do not need to be resisted simultaneously, and FRA has amended the rule to make this clear. (FRA announced this decision in a letter to APTA dated February 2, 2001, noted above.) At the same time, FRA has amended the rule to state that the truck-to-car-body attachment must withstand the resulting vertical reaction to the applied 250,000-pound horizontal load. Consequently, FRA has adopted the petitioners' recommendations on reconsideration, except for Bombardier's point that the 2g vertical load resistance requirement be based on yield strength rather than on ultimate strength. Use of a yield strength criterion may result in a more stringent requirement than one based on ultimate strength.

Section 238.223 Locomotive Fuel Tanks

This section contains the structural requirements for external and internal fuel tanks on passenger locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. The final rule required that external fuel tanks comply with the performance requirements contained in Appendix D to this part, or an industry standard providing at least an equivalent level of safety if approved by FRA's Associate Administrator for Safety under § 238.21. The requirements in Appendix D are based on AAR Recommended Practice-506 (RP–506), Performance Requirements for Diesel Electric Locomotive Fuel tanks, as adopted on July 1, 1995.

In its petition for reconsideration, APTA noted that RP–506 represents the first contemporary attempt to standardize fuel tank design for crash performance and that it was developed within the framework of conventional locomotive designs–*i.e.*, locomotives with a separate fuel tank suspended beneath the underframe and located relatively close to the rails between the trucks. According to APTA, the passenger rail community has since utilized RP–506 as the starting point for further development of a standard for passenger locomotive fuel tanks that: (1) Specifically addresses the needs of the various passenger-type locomotives and their operation, and (2) builds upon and complements RP–506 by encouraging the incorporation of additional safety-related enhancements such as increased height above the rail and compartmentalization. APTA stated that one of its own standards meets these goals: APTA SS–C&S–007–98, ''Standard for Fuel Tank Integrity for Non-Passenger Carrying Passenger Locomotives,'' and requested that FRA expressly allow the use of this standard as an alternative to RP–506.

Since the filing of its petition for reconsideration, APTA has petitioned FRA pursuant to § 238.21 for a finding that its fuel tank safety standard, designated as APTA S–007–98REV10, provides at least an equivalent level of safety to the requirements contained in this section. APTA's petition is identified as DOT docket number FRA–2001–8698; the petition and all documents in the docket are available for examination on the Internet at the DOT's Docket Management System Web site: http://dms.dot.gov. The proceedings on this petition will enable FRA to focus more closely on APTA's standard than in this response to petitions for reconsideration. For example, in examining how the APTA standard provides for safety and compares to the fuel tank requirements specified in this section, FRA is focusing on how the hazard of a jacknifed locomotive is addressed by the higher fuel tank ground clearance and other provisions of the APTA standard. Consequently, FRA has decided to deny APTA's petition for reconsideration request to modify the final rule to permit use of its fuel tank safety standard as an alternative to the requirements contained in this section. However, FRA makes clear that this denial in no way prejudices APTA's petition in docket number FRA–2001–8698. In fact, FRA is amending § 238.223 to better address petitions for special approval such as APTA's because the petition appears to encompass not only the external fuel tank safety standards specified in paragraph (a) but also the internal fuel tank safety standards specified in paragraph (b). As originally stated in the final rule, § 238.223 did not expressly provide the opportunity to seek special approval of an alternative, internal fuel tank safety standard. FRA is actively investigating the suitability of APTA's fuel tank safety standard and expects to render a decision soon on its petition.

Nonetheless, FRA notes that GETS has raised the concern that its Genesis P42 series locomotive fuel tank may not technically comply with § 238.223. GETS states that the fuel tank is an integral part of the car body structure; elevated a minimum of 29 inches above the rail even with fully worn wheels; divided into four separate compartments, each with a maximum capacity of approximately 550 gallons; equipped with a fuel fill and vent system that minimizes the potential for fuel spillage in any locomotive orientation; designed with sloping end plates to deflect debris down and away from the fuel tank, and a wall thickness providing puncture resistance in excess of the FRA standard. However, GETS believes that significant structural modification to the Genesis car body and fuel tank design will be required if FRA mandates strict compliance to all the requirements in Appendix D for external fuel tanks. According to GETS, these modifications would likely include eliminating the sloping end plate design of the fuel tank (a change which GETS believes would degrade overall fuel tank safety) and also require extensive internal structural modification to meet the loading

conditions originally intended for conventional, frame-suspended fuel tanks that have lower clearances above the rail. GETS believes that FRA approval of APTA's fuel tank safety standard would eliminate any compliance concerns, stating that the Genesis fuel tank meets or exceeds all provisions of APTA's fuel tank standard.

FRA recognizes that the Genesis locomotive fuel tank, as a fuel containment volume that is integral with a structural element of the locomotive not designed solely as a fuel container, would have met the definition of an ''integral'' fuel tank as proposed in the NPRM and seemingly complied with the requirements proposed for ''integral'' fuel tanks. *See* 62 FR 49793, 49805. However, as explained in the final rule, FRA removed the definition of ''integral fuel tank'' and instead specified requirements for ''internal'' and ''external'' fuel tanks to more clearly address FRA's safety concerns. See 64 FR 25611. Because the Genesis locomotive fuel tank extends outside the body structure of the locomotive, albeit to a significantly lesser degree than a conventional, frame-suspended fuel tank, the fuel tank is not ''internal'' and therefore subject to the requirements for ''external'' fuel tanks in the final rule. Although GE's concerns were not raised in a petition for reconsideration of the final rule, FRA will address them concurrently with FRA's response to APTA's petition for fuel tank safety equivalency.

FRA is amending the final rule to reconcile a discrepancy between the external and internal fuel tank safety standards. As stated in the final rule, paragraph (b)(3) provides in part that internal fuel tank bulkheads and skin shall at a minimum be equivalent to a 3/8-inch (6/16-inch) thick steel plate with a yield strength of 25,000 pounds per square inch. Following publication of the final rule, FRA compared this requirement with those for external fuel tanks in Appendix D, which states in part: ''(4) Load case 4-penetration resistance. The minimum thickness of the sides, bottom sheet and end plates of the fuel tank shall be equivalent to a 5/16-inch steel plate with a 25,000 pounds-per-square-inch yield strength . . . . The lower one third of the end plates shall have the equivalent penetration resistance . . . of a 3/4-inch steel plate with a 25,000 pounds-per-square-inch yield strength . . . .'' As a result, the final rule would have required that certain portions of an internal fuel tank be stronger (equivalent to a 6/16-inch steel plate) than similar portions of an external fuel tank (equivalent to a 5/16-inch steel plate). FRA did not intend that the internal fuel tank requirements be stricter in this regard. Consequently, FRA has amended § 238.223(b) to replace the 3/8-inch thickness requirement with a 5/16-inch thickness requirement to be consistent with Appendix D.

Finally, FRA notes that for purposes of advancing discussion in Phase II of the rulemaking FRA is concerned with fuel tanks on passenger equipment other than locomotives. Such fuel tanks may be found on head-end power generator cars, private cars, and express cars with engine-generator sets. Railroads should be mindful of the potential hazard posed by the presence of these fuel tanks in the event of a collision and derailment, and their contribution to fire. FRA will consider with the Working Group in Phase II whether to impose requirements on such fuel tanks.

Section 238.227 Suspension System

This section contains requirements for the suspension system performance of Tier I passenger equipment. FRA is explaining but not amending the requirements of the final rule.

In its petition for reconsideration, APTA requested that FRA recognize that most railroad passenger equipment experiences laterally oscillating trucks under some operating conditions and that most lateral oscillations are not hunting oscillations because they do not lead to a dangerous instability. APTA therefore asked FRA to clarify under what circumstances a lateral oscillation becomes a hunting oscillation for purposes of the rule.

In paragraph (a), the final rule defines hunting oscillations as lateral oscillations of trucks that could lead to a dangerous instability. FRA recognizes that this definition of hunting oscillations is less definitive than the one provided for Tier II passenger equipment in § 238.427(c), and in §§ 213.333 and 213.345 of the Track Safety Standards (49 CFR 213)-which is, ''a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square (mean-removed) for 2 seconds.'' Further, FRA recognizes that any instability could be dangerous under the right circumstances.

As noted in the preamble to the final rule, § 213.345 of the Track Safety Standards requires that train equipment operating at Class 6 track speeds and above (above 90 mph for passenger equipment and above 80 mph for freight equipment) be qualified for operation by meeting, among other things, the 0.4g root mean square requirement. *See* 64 FR 25612. In addition, § 213.333 of the Track Safety Standards requires that an instrumented car which is representative of the other equipment assigned to service on the railroad track be operated over the track at the revenue speed profile at least twice within every 60 days at Class 7 track speeds and above (above 110 mph), and that the lateral truck accelerations in the representative car must also not exceed the 0.4g root mean square requirement. *See* § 213.333(k).

In effect, the more specific hunting oscillation requirements of the Track Safety Standards apply to all Tier I passenger equipment operating at speeds greater than 90 mph, at least at the vehicle qualification stage. For Tier I passenger equipment operating at speeds not exceeding 90 mph, railroads are encouraged to follow as appropriate §§ 213.333 and 213.345 of the Track Safety Standards, as well as § 238.427(c) of the Passenger Equipment Safety Standards, for purposes of assuring compliance with § 238.227(a). Although railroad passenger equipment operating at speeds not exceeding 90 mph is not subject to any of these more specific provisions, demonstrating compliance with the 0.4g root mean square requirement will nonetheless demonstrate compliance with § 238.227(a). In general, FRA will evaluate whether hunting oscillations present a ''dangerous instability'' in light of these vehicle/track interaction criteria and general engineering knowledge and experience (*e.g.,* possibility of wheel climb). In Phase II of the rulemaking, FRA will investigate more fully the safety implications of various types of lateral oscillations. As a result, more detailed requirements may be specified concerning hunting oscillations for all Tier I passenger equipment, and revisions to the more specific requirements for Tier II passenger equipment may be possible as well.

Section 238.235 Doors

This section contains the requirements for exterior side doors on passenger cars. These doors are the primary means of egress from a passenger train.

Paragraph (a) requires that by December 31, 1999, each powered, exterior side door in a vestibule that is partitioned from the passenger compartment of a passenger car shall have a manual override device that is: capable of releasing the door to permit it to be opened without power from inside the car; located adjacent to the door which it controls; and designed and maintained so that a person may

readily access and operate the override device from inside the car without requiring the use of a tool or other implement. Passenger cars subject to this requirement that were not already equipped with such manual override devices were required to be retrofitted accordingly.

In its petition for reconsideration, APTA explained that during Working Group meetings it had pointed out that certain passenger cars have quarter-point, dual-leafed door arrangements. According to APTA, each of these side door locations is equipped with a manual override device for one of the two door leafs, and each door leaf exceeds the dimensional requirements for an emergency door. APTA therefore requested that FRA clarify the rule to avoid requiring that each door leaf be equipped with a manual override device.

FRA has decided that, in the case of dual-leafed doors and solely for purposes of the retrofit requirement in paragraph (a), only one door leaf of a dual-leafed door arrangement be required to respond to a manual override device by December 31, 1999. FRA previously informed APTA of this decision and is now amending paragraph (a) accordingly. Yet, FRA recognizes the limitation on emergency egress capacity through the route of the single panel that is responsive to the manual release when the other door leaf is not open. As a result, for purposes of the permanent requirement applicable to new passenger cars in paragraph (b), each door leaf in such a dual-leafed arrangement must be capable of responding to a manual override device located adjacent to the door.

APTA's petition for reconsideration also raised concern with FRA's statement in the preamble to the May 12, 1999 final rule that a vestibule is not partitioned from the passenger compartment of a passenger car solely by the presence of a windscreen which extends no more than one-quarter of the width across the car from the wall to which it is attached. *See* 64 FR 25616. APTA stated that windscreens on some types of passenger cars extend one-third of the width across the car from the wall to which they are attached, and requested that FRA clarify the rule to acknowledge that these windscreens do not by themselves partition a passenger compartment from a vestibule.

FRA notes that the preamble language referenced by APTA was intended to address the concerns of railroads that windscreens not be considered partitions. FRA did not intend that windscreens constitute partitions where there is an open passageway that allows employees and passengers to move freely between the vestibule and passenger compartments. Consequently, FRA's statement in the preamble concerning windscreens was unnecessarily restrictive. FRA makes clear that the presence of windscreens or other structures that extend across a portion of the width of a passenger car do not ''partition'' the vestibule from the passenger compartment provided there is an open passageway allowing unobstructed movement between the vestibule and passenger compartments. There would not be a door between the vestibule and passenger compartments in such circumstances. Of course for purposes of the permanent requirement applicable to new passenger cars in paragraph (b) each powered, exterior side door must have a manual override device, even if the door is located in a vestibule that is not partitioned from the passenger compartment.

In the final rule, FRA reserved paragraph (d) for door exit marking and operating instruction requirements, which were specified in the Passenger Train Emergency Preparedness final rule, *see* 63 FR 24630. FRA intended in Phase II of the rulemaking to consider integrating into part 238 the door exit marking and operating instruction requirements specified in the Passenger Train Emergency Preparedness final rule, as well as consider revising the requirements as necessary. While FRA still intends to examine these requirements in Phase II, FRA has in the interim inserted a reference to the marking and instruction requirements specified in 49 CFR 239.107(a) to make clear that there are marking and instruction requirements and identify where to locate these requirements.

Section 238.237 Automated Monitoring

This section requires an operational alerter or a deadman control device in the controlling locomotive of each passenger train operating in other than cab signal, automatic train control, or automatic train stop territory on or after November 8, 1999. This section further requires that such locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with a working alerter. As a result, it is prohibited to use a deadman control device alone on these new locomotives operating in other than cab signal, automatic train control, or automatic train stop territory.

In its petition for reconsideration, APTA requested that FRA narrow the application of the restrictions in paragraph (d) which applied, as written, if the alerter or deadman control fails en route.'' *See* 64 FR 25678. APTA explained that some controlling locomotives are equipped with both a deadman and an alerter, and stated that only if both features fail should the restrictions in paragraph (d) apply.

FRA believes that the application of the restrictions in paragraph (d) should be consistent with the requirements in paragraph (a) for having an alerter or deadman feature. As a result, if a locomotive is required to be equipped with either a working alerter or a deadman feature pursuant to paragraph (a), and the locomotive is in fact equipped with both devices, then the restrictions in paragraph (d) would not apply if only one of the devices fails en route. Of course, alerter and deadman control features are safety appurtenances which are required to be in proper condition and safe to operate under FRA's Railroad Locomotive Safety Standards. See 49 CFR 229.7. Further, these appurtenances are also subject to the requirements of the Locomotive Safety Standards in 49 CFR 229.9 that govern the movement for repair of a defective safety appurtenance. FRA recognizes that an alerter is preferable to a deadman feature as a safety device and will reexamine in Phase II of the rulemaking the continued allowance of deadman features in lieu of alerters under part 238.

In response to questions that have arisen since publication of the final rule, FRA is also amending this paragraph to clarify one of the remedial measure provisions. FRA makes clear that paragraph (d)(1)(i) requires a second person stationed in the locomotive cab as a remedial measure to be qualified on the signal system and trained to apply the emergency brake-not qualified on normal brake application procedures. FRA did not intend that this second person be required to be qualified on the brake application procedures in the way a locomotive engineer is qualified and certified under 49 CFR 240. This clarification will help avoid any further confusion and more appropriately express FRA's intent that the second person be required to know how to apply the emergency brake.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

Section 238.315 Class IA Brake Test

This section contains the requirements for performing Class IA brake tests. As stated in the final rule, paragraph (c) allows a Class I or Class IA brake test to be performed at a shop

or yard site without requiring that the test be repeated at the first passenger terminal if the train remains on air and in the custody of the crew. 64 FR 25683. Paragraph (c) is intended to be an incentive for railroads to conduct Class IA brake tests at shop or yard locations where they can be performed more safely and easily than at a passenger terminal. FRA is therefore amending paragraph (c) to allow a train crew to receive notice that a Class IA brake test has been performed, rather than require that the train crew actually have custody of the train during and after the performance of the test. To the extent FRA encourages Class IA brake tests to be performed at shop or yard locations (likely in advance of the time train crews normally report for duty) FRA recognizes that requiring train crews to have custody of the trains in these circumstances is seemingly a disincentive to performing the tests at shop or yard locations. Allowing the train crew to receive notice that a Class IA brake test has been performed, together with the requirement that the train remain on a source of compressed air, continues to ensure safety and is consistent with FRA's intent.

Additionally, following publication of the final rule FRA determined that the reference to a Class I brake test in paragraph (c) may cause confusion since subpart D contains specific requirements governing the performance of Class I brake tests and Class I brake tests must be performed by qualified maintenance persons presumably at shop or yard locations. As a result, FRA is amending paragraph (c) to remove the reference to a Class I brake test, consistent with the preamble discussion of this paragraph in the final rule which omits such reference as well. *See* 64 FR 25628.

FRA has also revised this section by clarifying the inspection requirement contained in paragraph (f)(3), which is particular to MU locomotives. FRA makes clear that for MU locomotives that utilize an electric signal to communicate a service brake application and only a pneumatic signal to propagate an emergency brake application, the emergency brake application shall be tested to determine that it functions as intended. As stated in the final rule, paragraph (f)(3) required that for all MU equipment the emergency brake application and the deadman pedal or other emergency control device be tested and be determined to function as intended. *Id.* However, on reconsideration FRA recognizes that imposing such a requirement on all MU locomotives during a Class IA brake test is unnecessary.

The intent of this provision is to ensure that an emergency brake application occurs in a train compromised of MU locomotives if an angle cock in the train is inadvertently closed. For certain MU locomotives an electric control wire or ''P'' wire is used to make service brake applications but the pneumatic train line is used for making emergency brake applications. If an angle cock is closed in a train made up of such MU locomotives, the engineer would be able to make regular service brake applications to slow or stop the train because the brake application signal is transmitted over the ''P'' wire. However, if the engineer attempts to apply the emergency brakes either through the engineer's control stand or the emergency dump valve, the signal to apply the emergency brakes would not travel beyond the closed angle cock. As a result, the engineer would not have full emergency braking ability.

For the majority of MU locomotives, paragraph (f)(3) is unnecessary because a ''P'' wire circuit is used to apply both the service and emergency brakes throughout the train. For such locomotives, the inspection requirement in paragraph (f)(2) to determine that each brake sets and releases during a service brake application effectively tests to ensure that the emergency brakes also apply as intended. Even if an angle cock is closed on a train comprised of such MU locomotives, the signal communicating the emergency brake application will bypass the closed angle cock since it travels on the ''P'' wire and not on the pneumatic brake line.

FRA has also removed the reference to the ''deadman pedal or other emergency control devices'' from paragraph (f)(3). This reference is not necessary since such devices typically initiate service brake applications—not emergency brake applications. Further, to the extent any such device would initiate an emergency brake application, testing of the emergency brake application is specially addressed in paragraph (f)(3) in those instances where it is necessary. For similar reasons, FRA is modifying § 238.317(d)(2), below, which is the Class II brake test counterpart to this paragraph.

Section 238.317 Class II brake test

FRA has revised this section by clarifying the inspection requirement contained in paragraph (d)(2), which is particular to MU locomotives. FRA makes clear that for MU locomotives that utilize an electric signal to communicate a service brake application and only a pneumatic signal to propagate an emergency brake application, the emergency brake application shall be tested to determine that it functions as intended. As stated in the final rule, paragraph (d)(2) required that for all MU equipment the emergency brake application and the deadman pedal or other emergency control device be tested and be determined to function as intended. *Id.* However, for effectively the same reasons discussed above for the Class IA brake test counterpart to this requirement in § 238.315(f)(3), FRA recognizes that imposing such a requirement on all MU equipment during a Class II brake test is unnecessary.

In performing a Class II brake test, paragraph (d)(1) requires that the railroad determine that the brakes on the rear unit of a train apply and release in response to a signal from the engineer's brake valve or controller of the leading or controlling unit, or a gauge at the rear of the train or in the cab of the rear unit indicates that brake pipe pressure changes are properly communicated at the rear of the train. For the majority of MU locomotives where a ''P'' wire circuit is used to apply both the service and emergency brakes throughout the train, paragraph (d)(2) is unnecessary because the inspection requirement in paragraph (d)(1) effectively tests the integrity of both the service and emergency brake application signals throughout the train. However, for those MU locomotives that use an electric control wire or ''P'' wire to make service brake applications but use the pneumatic train line for making emergency brake applications, the inspection requirement in paragraph (d)(1) is, by itself, insufficient to determine whether the emergency brakes will apply as intended. Hence, the need for this requirement.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.411 Rear end structures of power car cabs

As stated in the final rule, the rear end structure of a power car cab provides protection to crewmembers from intrusion of locomotive machinery or trailing cars into the cab as a result of a collision or derailment. The requirements in this section are based on a specific end structure design that consists of two full-height corner posts (paragraph (a)) and two full-height collision posts (paragraph (b)). In addition, this section specifies loading requirements that each of these

structural members must withstand and permits flexibility for using other equipment designs that provide equivalent structural protection. The required rear end structural protection results in considerably greater protection to the train operator than that provided by previous passenger equipment designs. Together, the front and rear end structural protection required by this rule for a power car cab make the cab a highly survivable crash refuge.

In its petition for reconsideration, Bombardier raised concern that the 750,000-pound shear strength requirement for collision posts in paragraph (b)(1) of the final rule arose due to confusion between the loading requirements in the following sections: § 238.405(a) (longitudinal static compressive strength); § 238.409 (forward end structures of power car cabs); and § 238.411. Bombardier explained that, for Amtrak's high-speed trainsets, compliance with the 2,100,000-pound longitudinal static compressive strength requirement was met by applying the load at the vertical centerline of the underframe as follows: 300,000 pounds at each of the two front corner post locations, and 500,000 pounds at each of the three front collision post locations; 300,000 pounds at each of the two rear corner post locations, and 750,000 pounds at each of the two rear collision post locations. As such, the 750,000-pound force applied to the rear collision post locations was applied at the vertical centerline of the underframe-not at the shear connection at the top of the underframe-to demonstrate compliance with the longitudinal static compressive strength requirement in § 238.405(a).

Bombardier stated that the purpose of the rear collision and corner posts is to prevent intrusion into the cab from the rear. Bombardier noted that the total weight of all the components in the machinery compartment behind the power car cab is approximately 31,000 pounds and that these components are designed with an attachment strength to resist an 8g longitudinal load. According to Bombardier, to address the risk of incursion into the rear of the power car cab, the cab's rear collision posts were each designed to resist a shear load of 500,000 pounds at the joint with the underframe. Bombardier recommended that § 238.411(b)(1) be modified by substituting this 500,000-pound loading requirement for the 750,000-pound loading requirement for rear collision posts in the final rule.

FRA has adopted Bombardier's request and modified paragraph (b)(1) accordingly. (FRA has also made a corresponding change to figure 2 to subpart E.) FRA recognizes that the strength of the power car cab's rear collision posts should not necessarily be dependent on the strength of the cab's front end structure, as the front and rear end structures are intended to protect against somewhat different hazards. The front end structure must protect against the greater hazard of a head-on collision with another train or object.

Section 238.419 Truck-to-Car-Body and Truck Component Attachment

FRA has modified this section in response to petitions for reconsideration. See the discussion of the Tier I counterpart to this section at § 238.219, above.

Section 238.421 Glazing

This section contains the safety glazing requirements for Tier II passenger equipment exterior windows. FRA believes that the higher speed of Tier II passenger equipment necessitates more stringent glazing standards than those currently required by 49 CFR 223. Nonetheless, in response to comments on the NPRM, FRA decided to focus the final rule principally on more stringent safety glazing requirements for end-facing exterior windows as specified in paragraph (b), instead of all exterior windows. *See* 64 FR 25634. FRA did note, however, that well in advance of the final rule it had helped to develop the specifications for exterior window safety glazing of Amtrak's high-speed trainsets. FRA believes that these specifications provide excellent protection to the trainsets' occupants. As a result, FRA included the specifications as alternative standards in paragraph (c) for use by Amtrak in equipment ordered prior to May 12, 1999, with limitations on the replacement of windows.

Following publication of the final rule, Amtrak petitioned FRA for reconsideration of the safety glazing requirements. In particular, Amtrak noted that the provision for end-facing exterior glazing in paragraph (b)(1) required testing at an impact angle of 90 degrees to the window's surface; whereas, paragraph (c) required that each end-facing exterior window be tested at an impact angle equal to the angle between the window's surface as installed and the direction of travel. Amtrak stated that the requirement in paragraph (c) was consistent with the high-speed trainset specification and believed that complying with the requirement in paragraph (b) would likely require a thickening of the glazing which would protrude up to an inch outward from the otherwise streamlined surface of the power car. According to Amtrak, limiting the use of replacement windows conforming to paragraph (c) and ultimately compelling the use of windows conforming to paragraph (b) would thereby affect both the thermal and acoustic performance of its high-speed trainsets ordered prior to May 12, 1999.

FRA is amending paragraph (c) to make clear that use of the alternative safety glazing standards specified in that paragraph is available to passenger equipment ordered prior to May 12, 1999, for the life of the equipment. The only Tier II passenger equipment subject to the provisions of paragraph (c) are Amtrak's high-speed trainsets ordered prior to May 12, 1999. FRA recognizes that well in advance of the final rule the exterior windows in these trainsets were specially designed for the particular shape of the trainsets and that replacement windows should be of the same design. As amended, there is now no limitation on using replacement windows conforming to paragraph (c) in these trainsets.

Further, for passenger equipment not subject to the alternative standards specified in paragraph (c), FRA is also amending paragraph (b). As stated in the final rule, FRA had originally proposed that an end-facing exterior window resist an impact with a 12-pound steel sphere at an angle equal to the angle between the window's surface as installed and the direction of travel of the train. *See* 62 FR 49817. In response to comments on the proposal, FRA revised the rule text to require that the window glazing resist the impact with the 12-pound steel sphere at an impact angle of 90 degrees to the window's surface. *See* 64 FR 25634. However, upon reconsideration, FRA believes that this requirement was too strict. Although FRA agrees that specifying an impact angle of 90 degrees to the window's surface provides a uniform standard for production purposes, a point raised in comments on the NPRM, FRA recognizes that end-facing exterior windows on Tier II passenger equipment will likely be specially fitted for the design of this advanced equipment. Additionally, end-facing windows on power cars will be sloped away from the vertical plane to take advantage of aerodynamic designs and, therefore, any impact with the windows will likely occur at an angle less severe than 90 degrees to the surface of the windows.

Consequently, FRA has amended paragraph (b)(1) to provide that each end-facing exterior window in a passenger car and a power car cab, in the orientation in which the window is

installed in the car or cab, shall resist the impact of a 12-pound solid steel sphere traveling (i) at the maximum speed at which the car will operate (ii) at an angle no less severe than horizontal to the car, with no penetration or spall. In all cases, an impact angle that is perpendicular (90 degrees) to the window's surface shall be considered the most severe impact angle for purposes of this requirement. Performance testing may be conducted using an impact angle that is perpendicular to the window's surface, but is not required. FRA has also amended paragraph (c)(1) for clarity and consistency but does not intend the amended paragraph to be more stringent than paragraph (c)(1) in the May 12, 1999 final rule. Describing the impact angle as the ''angle between the window's surface as installed and the direction of travel,'' as stated in paragraph (c)(1) in the May 12, 1999 final rule, may be less clear than describing the impact angle in terms of an object traveling horizontal to the vehicle and striking the window in the orientation in which the window is installed in the vehicle.

In its petition for reconsideration, Amtrak also stated that the 0.001-inch witness plate requirement for demonstration of anti-spalling performance is inconsistent with the high-speed trainset specification. Amtrak stated that the high-speed trainset specification provided for the use of a 0.002-inch witness plate, and that the testing of the high-speed trainsets' windows is complete and would have to be repeated using a thinner witness plate. FRA had understood that the anti-spalling performance of the exterior window glazing on Amtrak's high-speed trainsets would be measured using a 0.001-inch witness plate, in accordance with a May 8, 1994 specification for the trainsets. A witness plate having a thickness of 0.002 inches was apparently used instead. FRA notes that the difference between the two witness plates is not as significant when compared to the 0.006-inch thick witness plate allowed by 49 CFR 223. Further, assuming that the window glazing on Amtrak's high-speed trainsets would not pass the performance testing requirements if a 0.001-inch witness plate were used, this too may require a thickening of the glazing that would affect the thermal and acoustic performance of the trainsets. As a result, for purposes of the standards in paragraph (c) for equipment ordered prior to May 12, 1999, FRA is amending paragraph (c)(3)(ii) to permit anti-spalling performance to be demonstrated by use of a 0.002-inch thick witness plate. FRA continues to believe that use of a 0.001-inch thick witness plate in paragraph (b)(2) is appropriate for equipment ordered on or after May 12, 1999. FRA is correcting paragraph (b)(2) principally because the word ''inch'' was inadvertently omitted from the paragraph.

As touched on above, in the final rule FRA decided not to impose on all Tier II passenger equipment the particular requirements for side-facing exterior window glazing which FRA had proposed in the NPRM. *See* 64 FR 25634–6. Instead, FRA required that Tier II power car cabs and passenger cars comply with either the existing side-facing exterior window glazing requirements specified in 49 CFR 223, or the alternative standards specified in paragraph (c), as appropriate. FRA included in the final rule's preamble the comments received on the proposed side-facing exterior window glazing standards for purposes of advancing the discussion of these standards in Phase II of the rulemaking. FRA also noted that certain of the comments FRA had received on the proposed standards addressed the sufficiency of the existing safety glazing standards for all passenger equipment-both Tier I and Tier II- and for freight equipment as well. In fact, in the ANPRM FRA had sought comment concerning the sufficiency of the existing safety glazing standards in part 223 for all equipment-both freight and passenger. *See* 61 FR 30696. Nonetheless, the Passenger Equipment Safety Standards Working Group was generally reluctant to address changes to part 223 in this proceeding because of the complexity of the issues in the rulemaking, the satisfaction with existing standards, and the need for coordination with freight interests not represented on the Working Group. *Id.*

FRA makes clear that it is concerned with the adequacy of the requirements of part 223 as they apply to both freight and passenger equipment, and these concerns need a fuller examination than has been done to date. FRA is therefore reiterating the principal concerns stated in the ANPRM-namely, that the witness plate used for testing under part 223 may be too thick, allowing spalling of pieces of glass large enough to cause injury; the impact test using a 24-pound cinder block is not repeatable; manufacturers of the window glazing or their products, or both, need to be certified (and, thereafter, periodically re-certified) by an independent testing laboratory; and the strength of the framing arrangement securing the glazing is not specified.

In particular, the cinder block test specified in part 223 has proven impractical and, now, unrepeatable because the block is no longer manufactured. To accomplish the test, a current block must be cut down in size and have material ground from its inner core to reduce the gross weight to meet the cinder block specifications. Moreover, no frangibility requirement is specified for the block or the strength of the material. In addition, each manufacturer that provides glazing materials for use in achieving compliance with part 223 must certify that each type of glazing material being supplied for this purpose has been successfully tested in accordance with the requirements of part 223 and that test verification data is available to the railroad or FRA on request. *See* 49 CFR 223, Appendix A, a(1). There is no requirement that the glazing products supplied to railroads be tested by an independent testing laboratory, and a glazing manufacturer's process of producing the glazing may have changed over time. FRA is also concerned that the glazing frame and gasket have sufficient strength to retain vehicle occupants in the event of a derailment or rollover. While the Passenger Equipment Safety Standards final rule does require securement of windows to resist both air pressure difference generated by passing trains and the impact forces the windows are required to withstand, *see* §§ 238.221(b) and 238.421(d), part 223 contains no such express requirements. FRA will reexamine the requirements of part 223 in Phase II of the rulemaking or through another appropriate forum.

As a separate matter, FRA also notes the concern for an appropriate ballistic impact test, as discussed in the preamble to the final rule. *See* 64 FR 25636. In the final rule, FRA deferred imposing new requirements for ballistic testing of exterior window glazing, except for purposes of the alternative glazing standards specified in paragraph (c). FRA will reexamine this issue in Phase II of the rulemaking or through another appropriate forum.

Section 238.423 Fuel tanks.

This section contains the requirements for Tier II passenger equipment fuel tanks. Since the requirements for internal fuel tanks on Tier II passenger equipment are the same as those for Tier I passenger equipment in § 238.223(b), FRA notes that it has modified the requirements of § 238.223(b). Please see the discussion of § 238.223(b), above.

Section 238.427 Suspension system.

Paragraph (b) *Car body accelerations.* As stated in the final rule, paragraph (b) required that the steady-state lateral acceleration of passenger cars be less than 0.1g, as measured parallel to the car floor inside the passenger compartment, under all operating conditions. In its petition for reconsideration, Bombardier stated that Amtrak's high-speed trainsets are designed to have a nominal steady-state lateral acceleration equal to 0.1g at nine inches of cant deficiency. Bombardier added that the actual operational cant deficiency will often be slightly higher than the nominal cant deficiency upon which the schedule is predicated due to allowable variations in operating speed, as well as in track cross level and curvature consistent with 49 CFR 213, and believed that under normal operating conditions it may be common for the 0.1g acceleration level to be exceeded on some curves. Bombardier maintained that the 0.1g limit was established by the passenger rail industry to describe ride quality and not set a safety threshold, stating that the 0.1g criterion is based on a historically developed, long-standing AAR comfort limit and that the AAR Ride Index Table classifies a steady-state lateral acceleration of up to 0.11g as merely ''perceptible.'' Bombardier acknowledged that at some magnitude lateral acceleration creates the potential for injuries to passengers, and noted that operations are conducted in Europe with a steady-state lateral acceleration of up to 0.15g. Bombardier stated that the lean test requirement for vehicles intended for high cant deficiency operation under FRA's Track Safety Standards defines the maximum car body floor angle with respect to the horizontal when the vehicle is standing on track with a uniform superelevation equal to the intended target cant deficiency; that this requirement is intended to ensure that the nominal steady-state acceleration does not exceed 0.1g at the intended target cant deficiency; and that compliance with the static lean test requirement in the Track Safety Standards better defines and fulfills the intent of the steady-state lateral acceleration requirement. Bombardier added that if FRA is to define a maximum allowable steady-state lateral acceleration criterion, the maximum limit should be applicable to all high cant deficiency operations for both Tier I and Tier II passenger equipment since the potential for passenger injury resulting from such accelerations would be the same regardless of the type of equipment.

Similarly Amtrak, in its petition for reconsideration, believed that a steady-state lateral acceleration limit of 0.1g for passenger cars is too strict as a Federal standard. Amtrak mentioned that it was providing passenger service in equipment with a steady-state lateral acceleration of 0.09g between New Haven and Boston without incident. Amtrak maintained, as Bombardier did, that FRA-sponsored research showed the discomfort level for ten percent of passenger car occupants to be at a steady-state lateral acceleration of 0.15g, with no impact to passengers at an acceleration of 0.1g. Amtrak added that the TGV operates in Europe within an acceleration limit of 0.12g, and that the ICE train operates within a 0.15g limit. Amtrak contended that a 0.12g limit would be more appropriate.

In evaluating these petitions, FRA examined its experience with waivers of FRA's Track Safety Standards where FRA has permitted five or more inches of cant deficiency for passenger equipment operation. In addition, FRA reviewed the results of qualification testing of several high-speed vehicles that have been conducted in the past few years in accordance with subpart G of the Track Safety Standards. Tests involving both tilting and non-tilting equipment have shown that steady-state lateral acceleration levels below 0.1g are achievable in both types of equipment. Further, FRA notes that although there is no specific 0.1g limit in the Track Safety Standards, the roll angle requirement in § 213.329 effectively restricts non-tilting passenger equipment to no more than six inches of cant deficiency and requires that tilting equipment be capable of limiting steady-state lateral accelerations to no more than 0.1g. This static lean test evaluates a vehicle's suspension system and tilt control system, if so equipped, in a static condition; whereas, paragraph (b) describes a limit on the steady-state lateral accelerations that are experienced by passengers under operating conditions. Paragraph (b) is a performance requirement concerning the actual dynamic operation of the suspension and tilt control systems. Amtrak's high-speed trainsets are designed with tilt control systems that compensate for part of the lateral accelerations that result from operating at speeds above the balance speed. If there were no car body tilt, a nine inch cant deficiency (nine inches of unbalance) would correspond to an equivalent lateral acceleration of 0.15g. The tilt control systems would be expected to compensate for 70% of this acceleration, however, leaving a net acceleration of 0.05g to be experienced by a passenger.

FRA believes that a limit of 0.1g for steady-state, car body lateral acceleration is consistent with U.S. rail industry practice. However, FRA recognizes that as stated in the final rule, compliance with the requirements of paragraph (b) must not only be demonstrated during the qualification testing of the equipment, but also continually for the operational life of the equipment. As a result, FRA has amended the final rule to distinguish between the steady-state lateral acceleration limit for qualification testing of the equipment and the limit for service operation of the equipment, in order to provide an operational tolerance level. As amended, paragraph (b) requires that steady-state, car body lateral acceleration be demonstrated not to exceed 0.1g at the maximum intended cant deficiency only during pre-revenue service acceptance testing under § 238.111 and § 213.345 of this chapter. FRA has introduced the phrase ''at the maximum intended cant deficiency'' to address the concern that, during pre-revenue service acceptance testing, a slight increase in train speed or change in track geometry may result in an actual cant deficiency at a few locations above that which was intended. Such an increase in actual cant deficiency at these locations would result in a corresponding increase in steady-state lateral acceleration which may exceed 0.1g. In monitoring high-speed equipment, FRA's experience is that such isolated fluctuations in steady-state lateral acceleration caused by variances between the actual and intended cant deficiencies do not pose a larger safety concern. As amended, paragraph (b) also requires that steady-state, car body lateral acceleration not exceed 0.12g when the equipment is in service. Because the higher 0.12g limit takes into account operational concerns such as unintended changes in cant deficiency, FRA has not added the phrase ''at the maximum intended cant deficiency.'' Overall, FRA believes that these amendments to paragraph (b) appropriately address the concern that the original requirements were too strict, while helping to ensure that passengers not experience undue steady-state lateral accelerations which could cause them to lose their balance and fall.

FRA has also amended paragraph (b) to make clear that acceleration measurements shall be processed through a low-pass filter having a cut-off frequency of 10 Hz. Processing car body acceleration data through a low-pass filter having a cut-off frequency of

10 Hz is consistent with the Track Safety Standards, and a low pass filter retains important information about track curvature. FRA has also amended the rule to define the term ''steady-state.'' Steady-state lateral acceleration shall be computed as the mathematical average of the accelerations in the body of a curve, between the spiral/curve points. In a compound curve, the average lateral acceleration shall be calculated over each curve segment.

FRA has merged paragraph (d) of the final rule into paragraph (b) and changed the title of paragraph (b) to read, ''Car body accelerations.'' As paragraphs (b) and (d) of the final rule both established requirements for car body accelerations, FRA believes that having the requirements in separate paragraphs with separate titles was unnecessary and potentially confusing. Paragraph (d) of the final rule established limits for vertical acceleration, lateral acceleration, and the combination of lateral and vertical accelerations experienced by Tier II passenger equipment. As provided in the final rule, Tier II passenger equipment must be designed to meet these limits while traveling at the maximum operating speed over the intended route of the equipment.

In its petition for reconsideration, Bombardier noted that the basis for the limits in paragraph (d) of the final rule appeared to have been FRA's experience with the ICE and X–2000 trainsets on Amtrak's Northeast Corridor (NEC) and that neither the ICE nor X–2000 trainset could consistently meet the criteria as defined in the final rule because they exceeded the 0.3g peak-to-peak limit at revenue speeds at least 2–4 times per week. Bombardier further maintained that vehicle qualification tests conducted by FRA and Amtrak have demonstrated the impracticality of the 0.3g single event, peak-to-peak requirement. As an alternative to the requirements of the final rule, Bombardier recommended that car body accelerations be limited to the vehicle/track interaction safety limits defined in § 213.333 at a speed up to 10 mph above the maximum operating speed. This approach, according to Bombardier, was proposed in the NPRM for the high-speed track safety standards and provides a margin of safety by requiring that the limits be met at a speed up to 10 mph above the maximum operating speed. Bombardier also recommended that car body acceleration limits be defined in terms of sustained oscillations rather than as single events, to ensure that operations not be unduly restricted for perturbations caused by track switches, etc.

FRA makes clear that Tier II passenger equipment must demonstrate compliance with the requirements of former paragraph (d), now contained in paragraphs (b)(2) and (3), only during the pre-revenue service qualification testing of the equipment. These vertical and lateral car body acceleration limits are consistent with the limits contained in § 213.345(b) of the Track Safety Standards for vehicle qualification testing. Under the Track Safety Standards, the vertical and lateral car body acceleration limits contained in § 213.345(b) are more stringent than those specified in § 213.333. However, like former § 238.427(d), now §§ 238.427(b)(2) and (3), compliance testing under § 213.345 of the Track Safety Standards is required only at the vehicle qualification stage; whereas, under § 213.333 of the Track Safety Standards, compliance testing is required monthly or yearly, as appropriate. FRA believes that the more stringent acceleration limits specified in § 213.345(b) and § 238.427(b)(2) are appropriate for system qualification testing and, as the equipment and track wear, those more restrictive limits should give way to the less restrictive limits specified in § 213.333 for monitoring the safety of the system over its life.

FRA notes that since paragraph (b)(2) considers a single event, car body acceleration to be a peak-to-peak value over a one second period, it should not matter whether the acceleration data is processed through a filter having a low-pass, cut-off frequency of 10 Hz or a band pass of 0.5 to 10 Hz. Further, the Track Safety Standards provide for the use of a low-pass filter having a cut-off frequency of 10 Hz to measure car body accelerations. As a result, FRA is amending the rule so that the acceleration limits be processed through a filter having a cut-off frequency of 10 Hz, consistent with the Track Safety Standards.

Paragraph (c) *Truck (hunting) acceleration.* FRA is revising the title of this paragraph to more appropriately identify its requirements. The paragraph otherwise is unchanged.

Paragraph (d) *Overheat sensors.* FRA is removing paragraph (e) of the final rule and redesignating it as paragraph (d). Original paragraph (d) of the final rule has been merged into (b), as noted above.

Section 238.429 Safety appliances

This section contains the Tier II passenger equipment safety appliance requirements. In the final rule, FRA simplified and clarified how the Safety Appliance Standards contained in 49 CFR 231 and 49 U.S.C. 20302(a) apply to Tier II passenger equipment, tailoring them specifically to this new and somewhat unconventional equipment. The final rule retained all of the requirements proposed in the NPRM, with one modification concerning sill steps.

In its petition for reconsideration, Amtrak noted a concern with paragraph (f)(3) of this section, which addresses safety appliance requirements in the case where two high-speed trainsets are coupled together. Amtrak stated that the requirements of this paragraph will prevent its high-speed trainset fleet from developing its full design potential to use signal paths and station platform time. Paragraph (f)(3) of the final rule stated that if two trainsets are coupled to form a single train that is not semi-permanently coupled (*i.e.*, that is coupled by an automatic coupler), the automatically coupled ends shall be equipped with hand brakes, sill steps, end handholds, and side handholds that meet the requirements contained in 49 CFR 231.14. However, if the trainsets are semi-permanently coupled, these safety appliances are not required. *See* 64 FR 25688.

FRA understands and agrees with Amtrak's concern that the final rule would essentially negate the railroad's ability to connect two currently designed high-speed trainsets together to provide the passenger-carrying capacity of two high-speed trains running on one schedule. After reviewing the design of the currently operating high-speed trainsets, FRA has determined that the requirements contained in paragraph (f)(3) regarding handbrakes, sill steps, and side handholds are either not appropriate or are unnecessary based on the design of the high-speed trainsets operated by Amtrak. The design of the power cars utilized in the high-speed trainsets does not require an individual to mount a sill step in order to couple and uncouple the trainsets. The coupling or uncoupling of the trainsets can be accomplished from ground level without the necessity of an individual going between the equipment. Thus, because the sill step is unnecessary there is no reason to equip the cars with side handholds as the purpose of these handholds would be to provide an individual standing on the sill step a secure place to hold on to the equipment. In addition, the requirement to have the ends of the trainsets equipped with a hand brake is misplaced. Paragraph (b) of this section already requires a semi-permanently coupled trainset to be equipped with a parking or hand brake capable of

holding the train on a three percent grade.

Although FRA agrees that it is unnecessary for paragraph (f)(3) to require that the ends of the trainsets be equipped with hand brakes, sill steps, and side handholds for the reasons noted above, FRA does believe that an end handhold is necessary to ensure the safety of an individual while uncoupling the trainsets. An end handhold provides a secure fixture for individuals who are required to bend over the nose of the equipment to accomplish the coupling or uncoupling of the equipment. Consequently, FRA is amending paragraph (f)(3) of the final rule to require that when two trainsets are coupled together to form a single train that is not semi-permanently coupled, the automatically coupled ends must be equipped with at least an end handhold that meets the basic design and structural standards contained in this section.

Amtrak's petition for reconsideration also noted its belief that safety appliances for its high-speed trainsets would be addressed by an FRA approval letter following a sample car inspection. A sample car inspection is an inspection FRA performs prior to the placement of a car in service to determine whether FRA would take exception to the safety appliance arrangement if the car were in service. FRA does not issue an ''approval'' letter as such but would inform the car builder or railroad as appropriate whether FRA would take exception to the safety appliance arrangement. FRA has performed a safety appliance inspection of Amtrak's high-speed trainsets and has been in discussions with Amtrak and the equipment manufacturer to address issues concerning the safety appliance arrangement.

Section 238.435 Interior Fittings and Surfaces

This section contains requirements for Tier II passenger equipment interior fittings and surfaces. Once survivable space is ensured by vehicle structural strength and crash energy management features, the design of interior features and surfaces becomes an important factor in preventing or mitigating occupant injuries resulting from collisions or derailments.

In its petition for reconsideration, Amtrak believed that paragraph (c) does not include a requirement for the seat attachment to resist a longitudinal force of 8g and requested that such a requirement be added. FRA notes that paragraphs (a) through (c) contain requirements for the design of passenger car seats and the strength of their attachments to the car body. Specifically, paragraph (c) contains lateral and vertical acceleration loading requirements for purposes of ensuring sufficient seat attachment strength. The longitudinal loading requirement is specified in paragraph (a), which states: ''Each seat back and seat attachment in a passenger car shall be designed to withstand, with deflection but without total failure, the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.'' *See* 64 FR 25688. As a result, no modification of the final rule is necessary to address Amtrak's concern; the requirement is already contained in the rule.

FRA is amending paragraph (i) to correct a grammatical error by substituting the word ''are'' for the word ''is'' in a phrase in the first sentence.

Section 238.437 Emergency Communication

This section requires an emergency communication system with back-up power within a Tier II train. Following publication of the May 12, 1999 final rule, an issue arose concerning the accessibility of emergency communication transmission units. As stated in the final rule, emergency communication transmission units are required to be accessible to both passengers and crewmembers. 64 FR 25689. However, following publication of the final rule, FRA learned from Amtrak that the emergency communication system in its high-speed trainsets was not accessible to passengers, but rather was designed to allow the train crew to provide evacuation and other instructions to passengers in an emergency situation consistent with the NPRM's discussion of the emergency communication proposed requirement. *See* 62 FR 49783.

FRA acknowledges that in the NPRM the proposed rule text concerning emergency communication requirements was silent as to the accessibility of the communication system to passengers. However, FRA had believed the requirement for passenger accessibility to be implicit from the proposal that clear and understandable operating instructions be posted at or near each transmission location. *See* 62 FR 49820. The final rule made clear FRA's intent that the emergency communication system be accessible to passengers and be more than a one-way public address system from the crew to the passengers. FRA intended that such a system allow passengers to communicate with the train crew so as to bring to the crew's attention an emergency situation and otherwise allow passengers to communicate directly with the crew in an emergency. Amtrak has subsequently made accessible to passengers the emergency communication system transmission locations on its high-speed trainsets, and the system is now in compliance in this regard.

Following publication of the final rule, FRA also learned from Amtrak that not all passenger cars in its high-speed trainsets have emergency communication system transmission locations at each end of the cars. The café car in each trainset actually has three transmission locations but only one at an end of the car, in the only vestibule in the car. The other two locations in the car are in the galley and the crew office. Further, both the first class and end coach cars have only one transmission location—that at a single end of each car in the only vestibule in the cars. Amtrak has stated that it would be difficult to install transmission locations at the non-vestibule ends of these cars so that both ends of the cars are equipped with an emergency communication system transmission station. These cars exceed 45 feet in length and would be required by the May 12, 1999 final rule to have two emergency communication transmission locations, one at each end of each car, adjacent to the car's end doors.

In recognition that Amtrak's high-speed trainsets were in development in advance of both the proposed and final rules, FRA is amending paragraph (a) so that only one emergency communication transmission location is required in a passenger car ordered prior to May 12, 1999. For all other passenger cars exceeding 45 feet in length ordered on or after May 12, 1999, the rule will continue to require emergency communication transmission locations at each end of the cars.

Section 238.439 Doors

This section contains the requirements for doors on Tier II passenger cars. In the final rule, FRA reserved paragraph (g) for door exit marking and operating instruction requirements, which were specified in the Passenger Train Emergency Preparedness final rule, *see* 63 FR 24630. FRA intended in Phase II of the rulemaking to consider integrating into part 238 the door exit marking and operating instruction requirements specified in the Passenger Train Emergency Preparedness final rule, as well as consider revising the

requirements as necessary. While FRA still intends to examine these requirements in Phase II, FRA has in the interim inserted a reference to the marking and instruction requirements specified in 49 CFR 239.107(a) to make clear that there are marking and instruction requirements and identify where to locate these requirements.

Section 238.443 Headlights

This section contains requirements for headlights on Tier II power cars. In its petition for reconsideration, Amtrak noted that the power cars of its high-speed trainsets have two headlights, each headlight focused 1,000 feet ahead of the power cars. Amtrak was concerned whether its headlights complied with the requirements of this section. The final rule, as adopted without comment from the NPRM, required that a power car have at least two headlights producing no less than 200,000 candela-one headlight focused to illuminate a person standing between the rails 1,500 feet ahead of the power car under clear weather conditions, and the other 800 feet ahead under the same circumstances. 64 FR 25689. (For comparison, under § 229.125(a), a Tier I locomotive used in road service would be required to have one headlight producing no less than 200,000 candela arranged to illuminate a person at least 800 feet ahead and in front of the headlight.)

FRA explained in the preamble to the final rule that a headlight must be directed farther in front of a Tier II passenger train to illuminate a person than is currently required for existing equipment under 49 CFR 229.125(a). *See* 64 FR 25642. Because a Tier II passenger train will travel distances more quickly than a Tier I passenger train, the train operator will have less time to react to obstacles ahead of the train and will thereby require earlier awareness of these obstacles through a headlight directed farther in front of the train. In addition, a headlight focused farther in front of the train will provide earlier awareness to persons who may be in the path of the train.

Addressing Amtrak's concern, FRA understands that the light emitted from the headlights on Amtrak's high-speed trainsets is directed at such an angle that each headlight can simultaneously illuminate a person 800 and 1,500 feet ahead of the trainsets. FRA believes that these headlights are consistent with the final rule and satisfy FRA's safety concerns. For clarity, however, FRA is amending this section to replace the phrase ''focused to illuminate'' with ''arranged to illuminate,'' as used in 49 CFR 229.125(a) and (b). This amendment makes clear that even if the headlight is not specifically focused at a person 800 feet or 1,500 feet ahead of the trainset as the case may be, the headlight is in compliance if it is arranged to illuminate a person 800 feet or 1,500 feet ahead of the trainset, or both. Due to concerns regarding the handling of a power car with a defective headlight, discussed below, FRA has divided this section into two paragraphs with the clarifications discussed above contained in paragraph (a) of the section.

Amtrak also raised concern in its petition for reconsideration that the failure of a single bulb in one of the two headlights on its power cars would seemingly result in the trainset being in violation. Amtrak noted that service delays could result if the headlights on Tier II power cars were required to be repaired immediately upon being found defective.

FRA did not intend that a failure of a headlight on a Tier II power car be handled any more restrictively than the failure of a headlight on a Tier I locomotive. Under 49 CFR 229, a Tier I locomotive is permitted to continue in service with a defective headlight to the earlier of either the next calendar day inspection or the nearest forward point where the repairs necessary to bring it into compliance can be made. *See* 49 CFR 229.9(b). However, since headlights on Tier I locomotives are governed by part 229, which requires only one front headlight on such vehicles, FRA was in fact inclined to allow additional flexibility in using Tier II power cars with a defective headlight since Tier II power cars are required to have two headlights.

As the requirements for headlights on Tier II power cars are contained in 49 CFR 238, the provisions regarding the movement of non-running gear defects would apply to such headlights when they become defective. Thus, despite the concern raised by Amtrak in its petition, a power car with a defective headlight may continue to be used in passenger service until the power car's next calendar day mechanical inspection. FRA's intent when drafting the final rule was to permit a Tier II power car with one of its required headlights defective to continue to be used until its next calendar day mechanical inspection if: the car is tagged; the operation is deemed safe by a qualified individual; and operating restrictions are imposed, as appropriate. However, FRA did not intend to afford this broad latitude in using Tier II power cars when both of the required headlights become defective. In such instances, FRA intended that the power car's continued use be governed by restrictions similar to those imposed on a Tier I locomotive when its only required headlight becomes defective.

Therefore, FRA has added paragraph (b) to this section to make clear that a Tier II power car with one defective headlight is to be handled as a non-running gear defect in accordance with the movement for repair provisions contained in § 238.17. Thus, if one of the headlights on a Tier II power car becomes defective en route, the power car may continue in passenger service until the power car's next calendar day mechanical inspection, provided it has been properly inspected and tagged under § 238.17(c). Paragraph (b) makes clear that when both headlights on a Tier II power car become defective, the power car may continue in passenger service only to the nearest forward location where the repairs necessary to bring the power car into compliance can be made or to the power car's next calendar day mechanical inspection, whichever occurs first. These are general requirements that govern the movement for repair of a Tier I locomotive with a defective headlight and are equally applicable to a Tier II power car with a similar non-complying condition. FRA has also amended § 238.503(f) of this part for consistency. Section 238.503(f) provides that the movement of defective Tier II passenger equipment other than with power brake defects is governed by the requirements contained in § 238.17 of this part.

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment.

Section 238.503 Inspection, Testing, and Maintenance Requirements

Paragraph (f) of this section contains a reference to the requirements contained in § 238.17 to indicate that those provisions also apply to the movement of Tier II passenger equipment with a condition not in compliance with part 238, excluding power brake defects. As explained in the preceding discussion of headlight requirements for Tier II power cars, FRA has amended this section to make clear that the provisions contained in § 238.443(b) govern the movement of a power car with a headlight not in compliance with that section. This amendment is necessary because FRA had previously excluded Tier II power cars from the requirements for headlights contained in 49 CFR 229.125(a) and (b) that are otherwise applicable to other locomotives. *See* 49 CFR 229.3(c); 64 FR 25659.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

Section 238.603 Safety Planning Requirements

FRA has amended paragraphs (a)(3) and (b)(4) principally by substituting the term ''MIL–STD–882'' for ''MIL–STD–882C.'' As explained in the discussion of § 238.5 above, the final rule cited MIL–STD–882C as a formal safety methodology to guide railroads in eliminating or reducing the risk posed by each hazard identified to an acceptable level. MIL–STD–882 was updated on February 10, 2000, and designated as MIL–STD–882D, superceding MIL–STD–882C. These amendments make clear that a railroad may use MIL–STD–882D. The amendments also make clear that railroads may continue to use other formal safety methodologies to guide them in eliminating or reducing safety hazards.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix A to this part contains the schedule of civil penalties to be used in connection with this part. Conforming changes are being made to the entries for § 238.105, ''Train electronic hardware and software safety,'' and § 238.427, ''Suspension system,'' based on changes to the final rule as discussed above.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This response to petitions for reconsideration of the final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under these policies and procedures, the amendments contained in this response to petitions for reconsideration of the final rule are not considered significant in the same way because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments and clarifications will, overall, reduce the cost of complying with the rule. However, this cost reduction has not specifically been calculated. FRA believes that these amendments and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This response to petitions for reconsideration of the final rule does not change the information collection requirements contained in the original final rule.

Environmental Impact

FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (64 FR 28545; May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

Executive Order 13132 provides in part that, to the extent practicable, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. *See* 64 FR 43255; Aug. 10, 1999. FRA believes that this regulatory action will not have federalism implications that impose substantial direct compliance costs on State and local governments, and that this action is in compliance with Executive Order 13132. The amendments contained in this response to petitions for reconsideration of the final rule generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule.

FRA does note that States involved in the State Participation Program, pursuant to 49 CFR 212, may incur minimal costs associated with the training of their inspectors involved in the enforcement of the rule. Nonetheless, representatives of States were consulted in the development of the rule, in particular through the participation of the American Association of State Highway and Transportation Officials in the Passenger Equipment Safety Standards Working Group. *See* 64 FR 25541. FRA also considered and addressed comments on the rulemaking from the New York Department of Transportation, North Carolina Department of Transportation, Washington State Department of Transportation, and the State of Vermont Agency of Transportation.

In any event, Federal preemption of a State or local law occurs automatically as a result of the statutory provision contained at 49 U.S.C. 20106 when FRA issues a regulation covering the same subject matter as a State or local law unless the State or local law is designed to reduce an essentially local safety hazard, is not incompatible with Federal law, and does not place an unreasonable burden on interstate commerce. *See* 49 CFR 238.13. It should be noted that the potential for preemption also exists under various other statutory and constitutional provisions, including the Locomotive Inspection Act (now codified at 49 U.S.C. 20701–20703) and the Commerce Clause of the United States Constitution.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355; May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in

accordance with Executive Order 13211, and has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any 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 (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. This response to petitions for reconsideration of the final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects

49 CFR Part 216

Penalties, Railroad Safety, Reporting and recordkeeping requirements, Special notice for repairs.

49 CFR Part 238

Passenger equipment, Penalties, Railroad Safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 216—[AMENDED]

1. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 216.17 is amended by revising it to read as follows:

§ 216.17 Appeals.

(a) Upon receipt of a Special Notice prescribed in §§ 216.11, 216.13, 216.14, or 216.15, a railroad may appeal the decision of the Inspector to the FRA Regional Administrator for the region in which the notice was given. The appeal shall be made by letter or telegram. The FRA Regional Administrator assigns an inspector, other than the inspector from whose decision the appeal is being taken, to reinspect the railroad freight car, locomotive, railroad passenger equipment, or track. The reinspection will be made immediately. If upon reinspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective. If on reinspection the decision of the original inspector is sustained, the FRA Regional Administrator notifies the railroad that the appeal has been denied.

(b) A railroad whose appeal to the FRA Regional Administrator has been denied may, within thirty (30) days from the denial, appeal to the Administrator. After affording an opportunity for informal oral hearing, the Administrator may affirm, set aside, or modify, in whole or in part, the action of the FRA Regional Administrator.

(c) The requirements of a Special Notice issued under this subpart shall remain in effect and be observed by a railroad pending appeal to the FRA Regional Administrator or to the Administrator.

3. Section 216.23 is amended by revising it to read as follows:

§ 216.23 Consideration of recommendation.

Upon receipt of a Notice of Track Conditions issued under § 216.21, the FRA Regional Administrator prepares a recommendation to the Administrator concerning the issuance of an Emergency order removing the affected track from service. In preparing this recommendation, the FRA Regional Administrator considers all written or other material bearing on the condition of the track received from the railroad within three (3) calendar days of the issuance of the Notice of Track Conditions and also considers the report of the FRA Regional Track Engineer.

PART 238—[AMENDED]

4. The authority citation for part 238 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

5. Section 238.1 is amended by revising paragraph (c) to read as follows:

§238.1 Purpose and scope.

* * * * *

(c) Railroads to which this part applies shall be responsible for compliance with all of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part effective January 1, 2002.

(1) A railroad may request earlier application of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D upon written notification to FRA's Associate Administrator for Safety. Such a request shall indicate the railroad's readiness and ability to comply with all of the provisions referenced in paragraph (c) introductory text of this section.

(2) Except for paragraphs (b) and (c) of § 238.309, a railroad may specifically request earlier application of the maintenance and testing provisions contained in §§ 238.309 and 238.311 simultaneously. In order to request earlier application of these two sections, the railroad shall indicate its readiness and ability to comply with all of the provisions contained in both of those sections.

(3) Paragraphs (b) and (c) of § 238.309 apply beginning September 9, 1999.

6. Section 238.5 is amended by revising the definitions of *In service* and *Tourist, scenic, historic, or excursion operations;* removing the definitions *MIL–STD–882C* and *Monocoque;* and adding the definitions *MIL–STD–882* and *Semi-monocoque* to read as follows:

§ 238.5 Definitions.

* * * * *

In service, when used in connection with passenger equipment, means:

(1) Passenger equipment subject to this part that is in passenger or revenue service in the United States; and

(2) All other passenger equipment subject to this part in the United States, unless the passenger equipment:

(i) Is being handled in accordance with §§ 238.15, 238.17, 238.305(d), or 238.503(f), as applicable;

(ii) Is in a repair shop or on a repair track;

(iii) Is on a storage track and is not carrying passengers; or

(iv) Has been delivered in interchange but has not been accepted by the receiving railroad.

* * * * *

MIL-STD–882 means a military standard issued by the United States Department of Defense to provide uniform requirements for developing and implementing a system safety plan and program to identify and then eliminate the hazards of a system or reduce the associated risk to an acceptable level.

* * * * *

Semi-monocoque means a type of rail vehicle construction where the shell or skin acts as a single unit with the supporting frame to resist and transmit the loads acting on the rail vehicle.

* * * * *

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations.

* * * * *

7. Section 238.15 is amended by revising paragraph (e)(2) to read as follows:

§ 238.15 Movement of passenger equipment with power brake defects.

* * * * *

(e) * * *

(2) If the handbrake is located outside the interior of the car or is inaccessible to a qualified person:

(i) The car shall be locked-out and empty;

(ii) The speed of the train shall be restricted to 20 mph or less; and

(iii) The car shall be removed from the train or repositioned in the train at the first location where it is possible to do so.

* * * * *

Subpart B—Safety Planning and General Requirements

8. Section 238.105 is amended by revising it to read as follows:

§ 238.105 Train electronic hardware and software safety.

The requirements of this section apply to electronic hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002.

(a) The railroad shall develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of software and hardware that controls or monitors equipment safety functions.

(b) The hardware and software safety program shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); verification and validation testing for all hardware and software components and their interfaces; and comprehensive hardware and software integration testing to ensure that the hardware and software system functions as intended.

(c) The hardware and software safety program shall include a description of how the following will be accomplished, achieved, carried out, or implemented to ensure safety and reliability:

(1) The hardware and software design process;

(2) The hardware and software design documentation;

(3) The hardware and software hazard analysis;

(4) Hardware and software safety reviews;

(5) Hardware and software hazard monitoring and tracking;

(6) Hardware and software integration safety testing; and

(7) Demonstration of overall hardware and software system safety as part of the pre-revenue service testing of the equipment.

(d) (1) Hardware and software that controls or monitors a train's primary braking system shall either:

(i) Fail safely by initiating a full service brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes; or

(ii) Access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer.

(2) Hardware and software that controls or monitors the ability to shut down a train's main power and fuel intake system shall either:

(i) Fail safely by shutting down the main power and cutting off the intake of fuel in the event of a hardware or software failure that could impair the ability of the train crew to command that electronic function; or

(ii) The ability to shut down the main power and fuel intake by non-electronic means shall be provided to the train crew.

(e) The railroad shall comply with the elements of its hardware and software safety program that affect the safety of the passenger equipment.

9. Section 238.109 is amended by revising paragraph (b)(6) to read as follows:

§ 238.109 Training, qualification, and designation program.

* * * * *

(b) * * *

(6) Require all employees and contractors to pass either a written or an oral examination covering the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

* * * * *

10. Section 238.113 is amended by revising paragraphs (a)(3), (b) and (c) to read as follows:

§ 238.113 Emergency window exits.

(a) * * *

(3) Each emergency window exit shall be designed to permit rapid and easy removal from the inside of the car during an emergency situation without requiring the use of a tool or other implement.

(b) Each emergency window exit in a passenger car, including a sleeper car, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. A seat back is not an obstruction if it can be moved away from the window opening without requiring the use of a tool or other implement.

(c) Emergency window exits shall be marked, and instructions provided for their use, as required by § 223.9(d) of this chapter.

Subpart C—Specific Requirements for Tier I Passenger Equipment

11. Section 238.201 is amended by revising paragraph (a)(2) to read as follows:

§ 238.201 Scope/alternative compliance.

(a) * * *

(2) The structural standards of this subpart (§ 238.203-static end strength; § 238.205-anti-climbing mechanism; § 238.207-link between coupling mechanism and car body; § 238.209-forward-facing end structure of locomotives; § 238.211-collision posts; § 238.213-corner posts; § 238.215-rollover strength; § 238.217-side structure; § 238.219 -truck-to-car-body attachment; and § 238.223-locomotive fuel tanks) do not apply to passenger equipment if used exclusively on a rail line:

(i) With no public highway-rail grade crossings;

(ii) On which no freight operations occur at any time;

(iii) On which only passenger equipment of compatible design is utilized; and

(iv) On which trains operate at speeds not exceeding 79 mph.

* * * * *

12. Section 238.203 is amended by revising paragraph (h)(1) to read as follows:

§ 238.203 Static end strength.

* * * * *

(h) *Disposition of petitions.*

(1) If the Administrator finds it necessary or desirable, FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter.

* * * * *

13. Section 238.205 is amended by revising paragraph (b) to read as follows:

§ 238.205 Anti-climbing mechanism.

* * * * *

(b) Except for a cab car or an MU locomotive, each locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an anti-climbing mechanism at its forward end capable of resisting both an upward and downward vertical force of 200,000 pounds without failure.

14. Section 238.211 is amended by revising paragraphs (a)(1)(i) and (a)(2) to read as follows:

§ 238.211 Collision posts.

(a) * * *

(1) * * *

(i) Two full-height collision posts, located at approximately the one-third points laterally, at each end. Each collision post shall have an ultimate longitudinal shear strength of not less than 300,000 pounds at a point even with the top of the underframe member to which it is attached. If reinforcement is used to provide the shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection; or

* * * * *

(2) The requirements of this paragraph do not apply to unoccupied passenger equipment operating in a passenger train, or to the rear end of a locomotive if the end is unoccupied by design.

* * * * *

15. Section 238.219 is amended by revising it to read as follows:

§ 238.219 Truck-to-car-body attachment.

Passenger equipment shall have a truck-to-car-body attachment with an ultimate strength sufficient to resist without failure the following individually applied loads: 2g vertically on the mass of the truck; and 250,000 pounds in any horizontal direction on the truck, along with the resulting vertical reaction to this load. For purposes of this section, the mass of the truck includes axles, wheels, bearings, the truck-mounted brake system, suspension system components, and any other component attached to the truck by design.

16. Section 238.223 is amended by revising it to read as follows:

§ 238.223 Locomotive fuel tanks.

Locomotive fuel tanks shall comply with either the following or an industry standard providing at least an equivalent level of safety if approved by FRA under § 238.21:

(a) *External fuel tanks.* External locomotive fuel tanks shall comply with the requirements contained in Appendix D to this part.

(b) *Internal fuel tanks.*

(1) Internal locomotive fuel tanks shall be positioned in a manner to reduce the likelihood of accidental penetration from roadway debris or collision.

(2) Internal fuel tank vent systems shall be designed so they do not become a path of fuel loss in any tank orientation due to a locomotive overturning.

(3) Internal fuel tank bulkheads and skin shall, at a minimum, be equivalent to a 5/16-inch thick steel plate with a yield strength of 25,000 pounds per square inch. Material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained. Skid plates are not required.

17. Section 238.235 is amended by revising paragraph (a)(3) and (d) to read as follows:

§ 238.235 Doors.

(a) * * *

(3) Designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement. If the door is dual-leafed, only one of the door leafs is required to respond to the manual override device.

* * * * *

(d) Door exits shall be marked, and instructions provided for their use, as required by § 239.107(a) of this chapter.

18. Section 238.237 is amended by revising the introductory text of paragraph (d) and revising paragraph (d)(1)(i) as follows:

§ 238.237 Automated monitoring.

* * * * *

(d) The following procedures apply if the alerter or deadman control fails en route and causes the locomotive to be in non-compliance with paragraph (a):

(1)(i) A second person qualified on the signal system and trained to apply the emergency brake shall be stationed in the locomotive cab; or

* * * * *

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

19. Section 238.315 is amended by revising paragraphs (c) and (f)(3) to read as follows:

§ 238.315 Class IA brake test.

* * * * *

(c) A Class IA brake test may be performed at a shop or yard site and is not required to be repeated at the first passenger terminal if the train remains on a source of compressed air and:

(1) The train remains in the custody of the train crew; or

(2) The train crew receives notice that the Class IA brake test has been performed.

* * * * *

(f) * * *

(3) For MU locomotives that utilize an electric signal to communicate a service brake application and only a pneumatic signal to propagate an emergency brake application, the emergency brake application functions as intended.

* * * * *

20. Section 238.317 is amended by revising paragraph (d)(2) to read as follows:

§ 238.317 Class II brake test.

* * * * *

(d) * * *

(2) For MU locomotives that utilize an electric signal to communicate a service brake application and only a pneumatic signal to propagate an emergency brake application, the emergency brake application functions as intended.

* * * * *

Subpart E-Specific Requirements for Tier II Passenger Equipment

21. Section 238.411 is amended by revising paragraph (b)(1) to read as follows:

§ 238.411 Rear end structures of power car cabs.

* * * * *

(b) * * *

(1) A horizontal, longitudinal shear load of 500,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

* * * * *

22. Section 238.419 is amended by revising paragraph (a) to read as follows:

§ 238.419 Truck-to-car-body and truck component attachment.

(a) The ultimate strength of the truck-to-car-body attachment for each unit in a train shall be sufficient to resist without failure the following individually applied loads: a vertical force equivalent to 2g acting on the mass of the truck; and a force of 250,000 pounds acting in any horizontal direction on the truck, along with the resulting vertical reaction to this load.

* * * * *

23. Section 238.421 is amended by revising the introductory text of paragraph (b), revising paragraphs (b)(1) and (2), revising the introductory text of paragraph (c), and revising paragraphs (c)(1) and (3)(ii) to read as follows:

§ 238.421 Glazing.

* * * * *

(b) *Particular end-facing exterior glazing requirements.* Each end-facing exterior window in a passenger car and a power car cab shall also, in the orientation in which it is installed in the car:

(1) Resist the impact of a 12-pound solid steel sphere traveling (i) at the maximum speed at which the car will operate (ii) at an impact angle no less severe than horizontal to the car, with no penetration or spall. An impact angle that is perpendicular (90 degrees) to the window's surface shall be considered the most severe impact angle for purposes of this requirement; and

(2) Demonstrate anti-spalling performance by the use of a 0.001-inch thick aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test; and

* * * * *

(c) *Passenger equipment ordered prior to May 12, 1999.* Each exterior window in passenger equipment ordered prior to May 12, 1999, may comply with the following glazing requirements in lieu of the requirements specified in paragraphs (a) and (b) of this section:

(1) Each end-facing exterior window shall, in the orientation in which it is installed in the vehicle, resist the impact of a 12-pound solid steel sphere traveling (i) at the maximum speed at which the vehicle will operate (ii) at an impact angle no less severe than horizontal to the vehicle, with no penetration or spall. An impact angle that is perpendicular to the window's surface shall be considered the most severe impact angle for purposes of this requirement.

* * * * *

(3) * * *

(i) * * *

(ii) Demonstrate anti-spalling performance by the use of a 0.002-inch thick aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test; and

* * * * *

24. Section 238.427 is amended by removing paragraph (e), and by revising paragraph (b), revising the heading of paragraph (c), and revising paragraph (d) to read as follows:

§ 238.427 Suspension system.

* * * * *

(b) *Car body accelerations.* (1) A passenger car shall not operate under conditions that result in a steady-state lateral acceleration greater than 0.12g as measured parallel to the car floor inside the passenger compartment. During pre-revenue service acceptance testing of the equipment under § 238.111 and § 213.345 of this chapter, a passenger car shall demonstrate that steady-state lateral acceleration does not exceed 0.1g at the maximum intended cant deficiency.

(2) While traveling at the maximum operating speed over the intended route, the train suspension system shall be designed to:

(i) Limit the vertical acceleration, as measured by a vertical accelerometer mounted on the car floor, to no greater than 0.55g single event, peak-to-peak over a one second period;

(ii) Limit lateral acceleration, as measured by a lateral accelerometer mounted on the car floor, to no greater than 0.3g single event, peak-to-peak over a one second period; and

(iii) Limit the combination of lateral acceleration (a_L) and vertical acceleration (a_V) occurring over a one second period as expressed by the square root of ($a_L^2 + a_V^2$) to no greater than 0.6g, where a_L may not exceed 0.3g and a_V may not exceed 0.55g. Compliance with the requirements of paragraph (b)(2) shall be demonstrated during the pre-revenue service acceptance testing of the equipment required under § 238.111 and § 213.345 of this chapter.

(3) For purposes of this paragraph:

(i) Car body acceleration measurements shall be processed through a filter having a cut-off frequency of 10 Hz; and

(ii) Steady-state lateral acceleration shall be computed as the mathematical average of the accelerations in the body of a curve, between the spiral/curve points. In a compound curve, steady-state lateral acceleration shall be measured separately for each curve segment.

(c) *Truck (hunting) acceleration.*

* * *

(d) *Overheat sensors.* Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either onboard the equipment or at reasonable intervals along the railroad's right-of-way.

25. Section 238.429 is amended by revising paragraph (f)(3) to read as follows:

§ 238.429 Safety appliances.

* * * * *

(f) * * *

(3) If two trainsets are coupled to form a single train that is not semi-permanently coupled (i.e., that is coupled by an automatic coupler), the automatically coupled ends shall be equipped with an end handhold that is located and installed so that an individual can safely couple and uncouple the trainsets. The end handhold shall be not more than 16 inches from each side of the car and shall extend the remaining length of the end of the car. (If the equipment is designed with a tapered nose, the side of the car shall be determined based on the outer dimension of the tapered nose where the end handhold is attached.) The end handhold shall also meet the mechanical strength and design requirements contained in paragraphs (c), (d)(3), and (d)(6) of this section. If the trainsets are semi-permanently coupled, this safety appliance is not required.

* * * * *

26. Section 238.435 is amended by revising paragraph (i) to read:

§ 238.435 Interior fittings and surfaces.

* * * * *

(i) If, for purposes of showing compliance with the requirements of this section, the strength of a seat attachment is to be demonstrated through sled testing, the seat structure and seat attachment to the sled that are used in such testing must be representative of the actual seat structure in, and seat attachment to, the rail vehicle subject to the requirements of this section. If the attachment strength of any other interior fitting is to be demonstrated through sled testing, for purposes of showing compliance

with the requirements of this section, such testing shall be conducted in a similar manner.

27. Section 238.437 is amended by revising paragraph (a) to read as follows:

§ 238.437 Emergency communication.

* * * * *

(a) Except as further specified, transmission locations at each end of each passenger car, adjacent to the car's end doors, and accessible to both passengers and crewmembers without requiring the use of a tool or other implement. If the passenger car does not exceed 45 feet in length, or if the passenger car was ordered prior to May 12, 1999, only one transmission location is required;

* * * * *

28. Section 238.439 is amended by revising paragraph (g) to read as follows:

§ 238.439 Doors.

* * * * *

(g) Door exits shall be marked, and instructions provided for their use, as required by § 239.107(a) of this chapter.

29. Section 238.433 is amended by revising it to read as follows:

§ 238.443 Headlights.

(a) Each power car shall be equipped with at least two headlights. Each headlight shall produce no less than 200,000 candela. One headlight shall be arranged to illuminate a person standing between the rails 800 feet ahead of the power car under clear weather conditions. The other headlight shall be arranged to illuminate a person standing between the rails 1,500 feet ahead of the power car under clear weather conditions.

(b) A power car with a headlight not in compliance with the requirements of paragraph (a) of this section shall be moved in accordance with the following:

(1) If one of the headlights is defective, the defect shall be considered a non-running gear defect subject to the provisions contained in § 238.17 of this part.

(2) If both headlights are defective, the power car shall be inspected and tagged in accordance with the requirements contained in § 238.17(c) relating to non-running gear defects. The power car may continue to be used in passenger service only to the nearest forward location where the repairs necessary to bring the power car into compliance can be made or to the power car's next calendar day mechanical inspection, whichever occurs first.

30. Figure 2 to subpart E is revised to read as follows:

BILLING CODE 4910–06–P

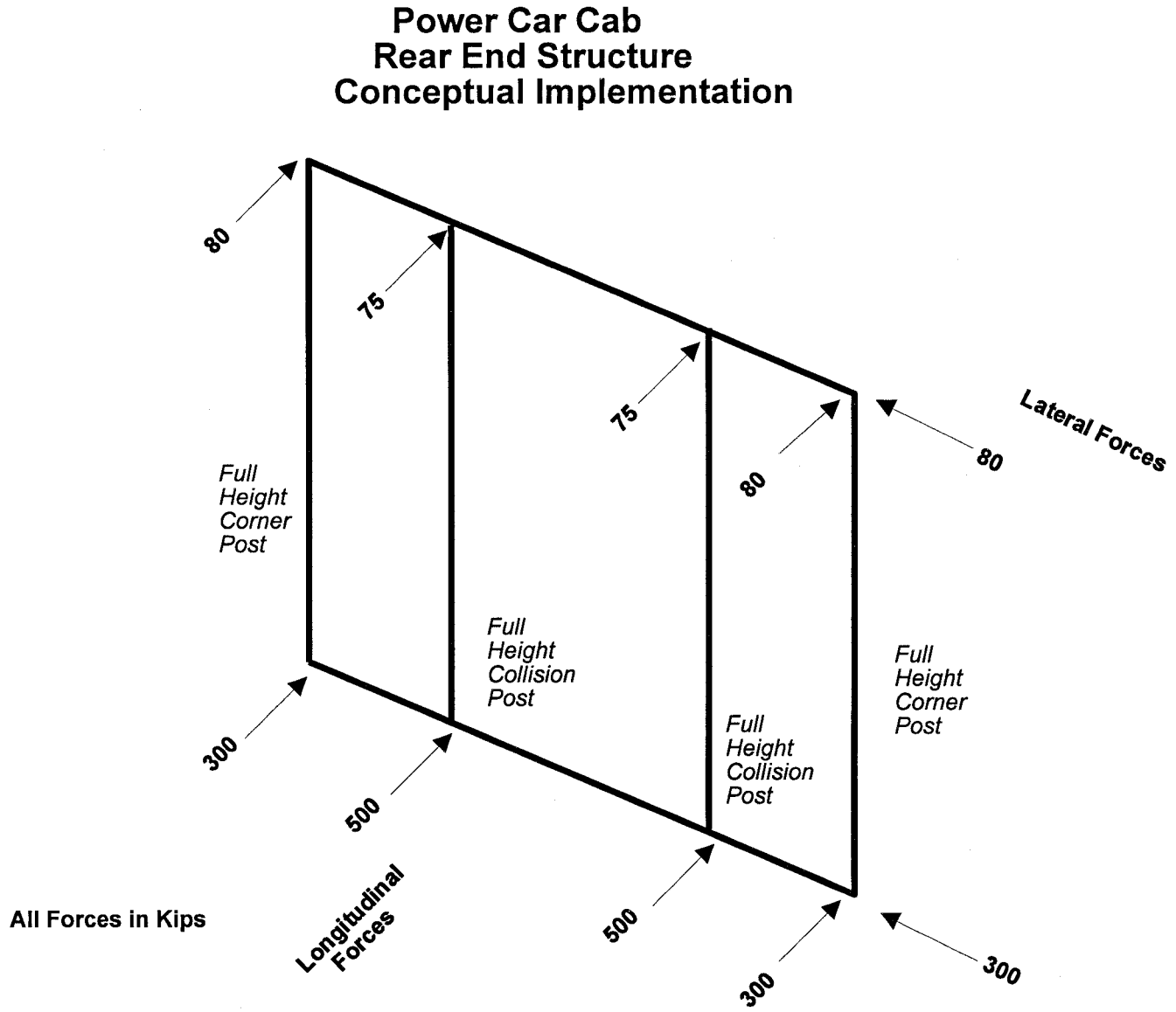

Figure 2

BILLING CODE 4910–06–C

Subpart F—Specific Requirements for Tier II Passenger Equipment

31. Section 238.503 is amended by revising paragraph (f) to read as follows:

§ 238.503 Inspection, testing, and maintenance requirements.

* * * * *

(f) *Movement of trains with other defects.* The movement of a train with a defect other than a power brake defect shall be conducted in accordance with § 238.17, with the following exceptions:

(1) The movement of a Tier II power car with a non-complying headlight shall be conducted in accordance with § 238.443(b) of this part; and

(2) When a failure of a secondary brake on a Tier II passenger train occurs en route, that train may remain in service until its next scheduled calendar day Class I brake test equivalent at a speed no greater than the maximum safe operating speed demonstrated through analysis and testing for braking with the friction brake alone. The brake system shall be restored to 100 percent operation before the train departs that inspection location.

* * * * *

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment—[AMENDED]

32. Section 238.603 is amended by revising paragraphs (a)(3) and (b)(4) to read as follows:

§ 238.603 Safety planning requirements.

(a) * * *

(3) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using a formal safety methodology such as MIL-STD–882; and

* * * * *

(b) * * *

(4) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using a formal safety methodology such as MIL–STD–882;

* * * * *

33. Appendix A to part 238 is amended by revising the entries for sections 238.105 and 238.427 to read as follows:

Appendix A to Part 238—Schedule of Civil Penalties [1]

* * * * *

Section	Violation	Willfull violation
* * * * * *		*
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety	7,500	11,000
(d) Failure to include required design features	5,000	7,500
(e) Failure to comply with hardware and software safety program	5,000	7,500
* * * * * *		*
238.427 Suspension system	2,500	5,000
* * * * * *		*

Issued in Washington, DC, on April 10, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–9419 Filed 4–22–02; 8:45 am]

BILLING CODE 4910–06–P

[1] A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $10,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. *See* 49 CFR par 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement. Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

Federal Register

Tuesday,
April 23, 2002

Part XI

Department of Labor

Veterans' Employment and Training Service

Service to Veterans; Final Performance Measures for State Employment Security Agencies; Notice

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Service to Veterans; Final Performance Measures for State Employment Security Agencies

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Final Notice.

SUMMARY: By law, the Assistant Secretary for Veterans' Employment and Training (ASVET) is required to establish performance standards for the provision of services to veterans by State Employment Security Agencies (SESA's). The ASVET, in turn, is required to report on these results in the Veterans' Employment and Training Service's (VETS) Annual Report to Congress. This document communicates the establishment of final performance measures for the provision of services to veterans by the public labor exchange, including those services provided by Local Veterans' Employment Representative (LVER) and Disabled Veterans' Outreach Program (DVOP) staff. VETS' performance measurement system for the public labor exchange consists of three measures: (1) Veteran Job Seeker Entered Employment Rate, (2) Veteran Job Seeker Employment Retention Rate at Six Months, and (3) Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services. These measures are to be calculated for two categories of veterans: (1) Veterans and Eligible Persons and (2) Disabled Veterans. VETS establishes these measures in light of comments received in response to proposed performance measures for services to veterans by the public labor exchange, as published in the **Federal Register** on May 31, 2001.

EFFECTIVE DATE: These performance measures for the public labor exchange service to veterans will become effective July 1, 2002.

ADDRESS: All comments received during the comment period following the publication of the proposed labor exchange measures for services to veterans (66 FR 29602 *et seq.*, May 31, 2001) are available for public inspection and copying during normal business hours at the Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–1316, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, 202–693–4719 (voice), or (800) 670–7008 (TTY/TDD for the hearing impaired), or E-mail: *Wilson-Robert@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

VETS establishes performance measures for the provision of services by the public labor exchange under the following authority:

A. Title 38, United States Code (U.S.C.), Chapter 41—Job Counseling, Training, and Placement Services for Veterans, Sec. 4107(a)(1)

The Secretary shall establish administrative controls for the following purposes: To insure that each eligible veteran, especially veterans of the Vietnam era and disabled veterans and each eligible person, who requests assistance under this chapter (38 USCS 4100 *et seq.*) shall promptly be placed in a satisfactory job, or job training opportunity or receive some other specific form of assistance designed to enhance such veteran's and eligible person's employment prospects substantially, such as individual job development or employment counseling services.

B. Title 38, U.S.C., Chapter 41—Job Counseling, Training, and Placement Services for Veterans, Sec. 4107 (b)

The Secretary shall establish definitive performance standards for determining compliance by the State public employment service agencies with the provisions of this chapter (38 USCS 4100 *et seq.*) and chapter 42 of this title (38 USCS 4211 *et seq.*).

These final performance measures are separate from the reporting requirements of section 4107 (c) of Title 38, U.S.C., and they do not negate these reporting requirements. Section 4212 of Title 38, U.S.C. requires entities awarded Federal contracts or subcontracts of $25,000 or more to take affirmative action to employ and advance in employment qualified Special Disabled Veterans, Vietnam-era Veterans, Recently Separated Veterans, (Pub. L. 106–419 added Recently Separated Veterans to the class of veterans receiving emphasis under Federal Contracts) and Campaign Veterans (any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized). Federal contractors and subcontractors are required by law and regulation to list virtually all job openings with their local SESA office. The SESA's, through the public labor exchange system, are required to provide priority referrals of qualified targeted veterans to these Federal contractor openings.

II. VETS Performance Measures

A. Background

VETS developed its performance measurement system based upon a series of tests of proposed measures and meetings with various stakeholders. Beginning in September 1998, and continuing through the Summer of 1999, VETS reviewed current performance measurements for the public labor exchange and DVOP and LVER programs. Following the finalization of the performance measures for the Workforce Investment Act (WIA) in 1999, and the publication of recommendations of the United States Employment Service's (USES) workgroup on performance measures for the public labor exchange system (65 FR 49708 *et seq.*, Aug. 14, 2000), VETS developed five proposed measures that were consistent with these related workforce development programs. These measures were: Entered Employment Rate, Employment Retention Rate at Six Months, Earnings Gain, Employment Rate Following Receipt of Staff-Assisted Services by Wagner-Peyser Staff, and Entered Employment Rate Following Referral to a Federal Contractor.

During July through September 2000, VETS conducted a beta test of its proposed performance measures in six (6) States. Based on the results of this beta test, the final recommendations of the USES workgroup on performance measures for the public labor exchange, and through coordination with the USES on the Revised Employment and Training Administration (ETA) 9002 Reports and Revised Employment and Training (ET) Handbook 406 (ETA 9002 Data Preparation Handbook), VETS published a set of four proposed performance measures in the **Federal Register** (66 FR 29602 *et seq.*, May 31, 2001). These measures were Veteran Job Seeker Entered Employment Rate, Veteran Job Seeker Employment Retention Rate at Six Months, Veterans' Employment Rate Following Receipt of Staff-Assisted Services, and Federal Contractor Job Openings Listed with the Public Labor Exchange. The first three of these measure were proposed to apply to all Veterans and to Disabled Veterans. The **Federal Register** Notice also provided a general framework for establishing expected levels of performance for each of these measures.

During the Summer of 2001, VETS reviewed and analyzed the comments received in response to the publication of the proposed performance measures. In addition, VETS considered reviews and comments from various sources on its proposed measures as well as other related measures, and guidelines. VETS considered the findings and recommendations in a report published in May 2001, by the General Accounting Office on the VETS proposed

performance measurement system. VETS then considered commentary on the proposed measures received from SESA representatives who attended a series of four Regional Planning and Management Workshops that VETS hosted across the country earlier in 2001. VETS also reviewed the final performance measures for the public labor exchange established by the ETA on July 1, 2001, and the comments received by USES for its publication of the draft ET Handbook 406 and VETS 200 Reports. Based on these considerations, VETS developed its final performance measures of services to veterans by the public labor exchange.

The final measures are consistent with Title 38, U.S.C., the requirements of the Government Performance and Results Act (GPRA) of 1993, VETS'' Strategic Plan and Annual Plan, and the performance measurement systems established by the WIA and the USES.

B. Response to Comments

In response to the four proposed VETS performance measures published in the May 31, 2001, **Federal Register**, VETS received 31 sets of comments distributed as follows: representatives from state agencies (17), Disabled Veterans' Outreach Program Specialists and Local Veterans' Employment Representatives (9), the National Association of State Workforce Agencies, USES, an ETA Regional Office (3), and current and former employees of VETS (2). The comments are discussed at length as follows:

(1) Veteran Job Seeker Entered Employment Rate

VETS initially proposed the Veteran Job Seeker Entered Employment Rate defined as:

Of Wagner-Peyser Act funded labor exchange applicants who are veterans and who in the first or second quarter following registration (Q_{+1} or Q_{+2}), earned wages from a new or different employer than that from which the applicant earned wages in the quarter prior to registration (Q_{-1}), divided by the number of applicants registered during the measurement period. Those applicants who earned wages in the first or second quarter following registration (Q_{+1} or Q_{+2}), solely from the same employer from which wages were earned in the quarter prior to registration (Q_{-1}), are excluded from the measure.

Comment: Five respondents supported the measure as proposed. Eight respondents stated concern that the two quarter period to follow-up veteran registrants' employment outcomes after the registration dates will not be sufficient for those with multiple barriers to employment or who are placed in training. Six respondents suggested that veterans who are enrolled in case management should be excluded from the denominator for the Veteran Job Seeker Entered Employment Rate because they are likely to require extensive services over a period of time that extends beyond two outcome follow-up quarters (Q_{+1} and Q_{+2}). Similarly, four respondents suggested that veterans who are enrolled in long-term training should be excluded from the denominator for the Veteran Job Seeker Entered Employment Rate because their employment outcomes are not likely to appear in the first or second quarter after registration.

Response: To maintain consistency with the final measures for the public labor exchange, as published by the USES in the May 31, 2001, **Federal Register**, VETS will retain the proposed definition where outcomes are determined in the two quarters following the quarter of registration. To ensure consistency with the performance measures for the public labor exchange, VETS will use the registration policies defined in the ET Handbook 406. VETS and USES have jointly discussed the issue of State systems not counting registrants while they are in long-term training or are receiving intensive services such as case management. In order to develop a broad, overall measure of the effectiveness of participation in the public labor exchange system, VETS and USES agree that states are not to exclude from the applicant counts any individuals engaged in long term training or case management. VETS believes the measure of Veteran Job Seeker Entered Employment Rate will help capture the success of the public labor exchange efforts to assist veteran job seekers in achieving the desired outcome of entering employment.

(2) Veteran Job Seeker Employment Retention Rate at Six Months

VETS initially proposed the Veteran Job Seeker Employment Retention Rate at Six Months defined as:

Of those Wagner-Peyser Act labor exchange applicants age 19 and older at the time of registration who are veterans, and who in the first or second quarter following registration (Q_{+1} or Q_{+2}), earned wages from a new or different employer than that from which the applicant earned wages in the quarter prior to registration (Q_{-1}); those who also continue to earn wages in the third or fourth quarter (Q_{+3} or Q_{+4}) respectively, following registration, divided by the number who earned wages in the first or second quarter after registration (Q_{+1} or Q_{+2}).

Comment: Six respondents supported the measure as proposed. Four respondents asked for further clarification about why this measure includes the applicants aged 19 years old.

Response: To maintain consistency with the public labor exchange and the similar measure for Title 1 of WIA, the VETS employment retention measure will follow the definition and specifications set forth for the public labor exchange employment retention measure. The exclusion of registrants under the age of 19 at the time of registration will remove from the equation a large portion of those registered job seekers who most likely are seeking only short term employment.

Comment: Five respondents stated that the measure is beyond the control of the public labor exchange because several factors may influence employment retention. Some of the possibilities include seasonal nature of some occupations and changes in the economy of a particular area.

Response: VETS acknowledges that the employment retention measure is blind to labor market conditions. In conjunction with the USES, VETS will be developing methods to adjust for economic conditions and characteristics of registered veteran job seekers to use in establishing performance goals and for interpreting final performance levels compared to the rates established in the baseline year.

Comment: One respondent noted that the measure, as originally proposed, does not measure the same group of veterans as the Veteran Job Seeker Entered Employment Rate measure.

Response: We agree that the Veteran Job Seeker Employment Retention Rate at Six Months measures outcomes for a different pool of applicants than those measured in the Entered Employment Rate. The Employment Retention Rate measures outcomes for job seekers who are age 19 or older at the time of registration while the Entered Employment Rate measures outcomes for applicants of all ages. The intent of the proposed Employment Retention Rate measure is to determine employment retention outcomes for those most likely to be seeking long-term employment, excluding youth, who are most likely seeking short term employment.

Comment: Another respondent noted that the standard does not measure movement from part-time to full-time work. Some respondents also noted that initial placements are often temporary and seasonal.

Response: VETS supports the measure of Veteran Job Seeker Employment Retention Rate at Six Months as a

measure that is consistent with those of other workforce development programs. The intent of the measure also supports VETS' vision of minimizing underemployment, maximizing career employment opportunities, and improving labor market status of veteran job seekers. With respect to the comment about temporary and seasonal work, it is important to note that this measure assesses retention in employment, not job retention with a specific employer. To be counted in this measure, the veteran job seeker must retain some form of employment in the two quarters following initial entry to employment, not necessarily continued employment with the same employer.

Comment: A respondent questioned the effect that the emphasis on self-service and automated systems will have on this standard.

Response: The measure is not intended to specifically assess effectiveness of the use of self-service tools by individuals. Individuals using only self-service tools will not be counted unless a State has defined its registration policy to include these individuals in the registered applicant pool. For States that do register these individuals, the measure will help capture the quality of staff-assisted services, facilitated self-help services, and self-services that provide job seekers with resources to secure and maintain continued employment.

Comment: Another respondent also suggested that the measure will be flawed if it fails to take into account customer satisfaction.

Response: The measure of Veteran Job Seeker Employment Retention Rate at Six Months does not specifically include a customer satisfaction component as that type of information is intended to be collected separately. The public labor exchange performance measures for customer satisfaction will serve as a broad indicator of how well the public labor exchange is serving all job seekers including veterans.

(3) Veterans' Employment Rate Following Receipt of Staff-Assisted Services

VETS initially proposed the Veterans' Job Seeker Employment Rate Following Receipt of Staff-Assisted Services defined as:

Of the Wagner-Peyser Act applicants who are veterans, who registered in a quarter, (Q_0), and who received some form of staff-assisted services from public labor exchange staff, the number who are employed by the end of the first or second quarter after registration, (Q_{+1} or Q_{+2}).

Comment: Five respondents supported a performance measure for Veterans' Job Seeker Employment Rate Following Staff-Assisted Services. Several respondents discussed the definition of staff-assisted services, the ETA policies for States to define registration, and the potential impacts of these two issues on this measure. Four respondents suggested that the staff-assisted services should be more specifically defined. Two respondents noted that it is possible that outcomes following this measure are likely to be similar to those of the Veteran Job Seeker Entered Employment Rate because States may choose to implement a registration policy where only those job seekers who receive staff-assisted services are actually registered. Two respondents suggested that states should have greater flexibility to define staff-assisted services. One respondent recommended that referrals to a job not be considered a staff-assisted service because this activity is not staff-intensive. One respondent recommended not implementing this measure unless VETS provides additional funding for programming. Finally, two other respondents suggested that the quality of staff-assisted services can be measured through the Veteran Job Seeker Employment Retention Rate After Six Months measure.

Response: The comments about this measure pertain to two issues: registration policies and definition of staff-assisted services. The new registration policy for the public labor exchange requires that anyone receiving staff-assisted services be registered. Under the WIA, States do have the option to register those using only self-service tools. For States that exercise the option to not register self-service customers, VETS acknowledges that the Veterans' Employment Rate Following Receipt of Staff-Assisted Services measure may parallel the entered employment measure. To maintain consistency, and to ensure that any veteran in any State who received services from the public labor exchange will be counted by the VETS performance measures, VETS will maintain the Veterans' Employment Rate Following Receipt of Staff-Assisted Services measure (this measure will be renamed as Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services).

The elements of the staff-assisted services were developed in consultation with the USES workgroup of State representatives, officials from the National Association of State Workforce Agencies, and staff from VETS and ETA National and Regional offices. The workgroup revisited the definition and specifications for staff-assisted services to ensure that uniformity can be achieved among States. Therefore, the elements of staff-assisted services have been defined in ways that all States can reasonably apply the definition of staff-assisted services to their specific workforce development programs and systems.

VETS believes that this measure will provide effective data regarding the outcomes of more intensive public labor exchange services to veterans. For example, a veteran job seeker receiving staff-assisted services may require a multitude of services any one of which, or combination thereof, may require extensive staff time. Thus, measures of entered employment outcomes after receipt of staff-assisted services will provide an indication of the quality of those services. VETS encourages States to collect and analyze more detailed information on staff-assisted services, as each State deems necessary for its management purposes.

Comment: Two respondents suggested that VETS consider ''weighting'' services so that those Services that are more staff-intensive (such as case management) are given additional weight, compared to those that are less intensive.

Response: VETS is exploring the development of a weighted measurement system that would further encourage the provision of intensive services to veterans by the public labor exchange system.

Comment: Two respondents suggested that case management by DVOP or LVER staff specifically should be emphasized in this measure.

Response: VETS is focusing its guidance on DVOP services to address the needs of those veteran job seekers, particularly disabled veterans, who could benefit from case management and other employment development activities by DVOP staff. VETS is currently developing specific performance measures as well as prototype performance standards that would apply to DVOP and LVER staff activities.

Comment: Another respondent suggested that restricting measurement for this measure to only two quarters may not fully capture the entered employment outcome, and therefore three follow-up quarters would be preferable.

Response: VETS believes that consistency between this measure and other entered employment measures for the public labor exchange will help provide broad, overall measures of the effectiveness of the public labor exchange system in serving veterans.

Therefore, VETS and ETA agree that this measure should use data from the two quarters following registration as the period for determining entered employment outcomes.

(4) Federal Contractor Job Openings Listed With the Public Labor Exchange

VETS initially proposed the Federal Contractor Job Openings Listed with the Public Labor Exchange be defined as:

The percentage increase in the number of Federal contractor job openings listed annually with the public labor exchange, relative to the number listed in the previous Program Year (PY).

Comment: VETS received 27 comments on the proposed measure for Federal Contractor Job Openings Listed (FCJL) With the Public Labor Exchange. Listing of jobs by Federal contractors with the public labor exchange is not under the control of labor exchange staff. Four respondents noted that listings of contractors and subcontractors available to staff are not complete. Seven respondents noted that enforcement of the FCJL program is the responsibility of the Office of Federal Contract Compliance Programs. Nine respondents noted that contractors can meet their Federal contractor award requirements by listing job openings with America's Job Bank, not the public labor exchange. New Federal contracts in any given State do not necessarily imply new job openings. Firms require new contracts to maintain their current workforce. The quantity of new Federal contractor job listings is determined by the amount and location of Federal contracting. No State is guaranteed a quarter to quarter increase in the number of Federal contracts that will be awarded in its jurisdiction.

Response: VETS has chosen not to use the proposed FCJL measure as a performance standard for the public labor exchange. Since VETS is mandated by section 4212 of Title 38, U.S.C. to report to Congress on Federal contractor listing and hiring activity, States will still be required to submit data on the number of Federal contractor job listings received, the number of Federal contractors listing jobs, the number of veterans referred to FCJL jobs, and on the number of veterans placed in FCJL jobs.

(5) General Comments

Comment: Additionally, VETS received a number of comments related to performance measures in general. Several respondents raised concerns about registration policies. Four respondents requested clarification of the definitions of (1) registration, (2) renewal of registration, and (3) reporting periods, as they relate to the rolling four quarter concept. One respondent expressed concern that under the self-service concept, the number of veteran job seekers will drop significantly. Another respondent suggested that in some States, the registration policy will create situations where the only veteran job seekers who will be registered are those who receive intensive services offered principally by staff funded under WIA grants, without regard to the services provided by staff funded under Wagner-Peyser or DVOP or LVER grants. As a result of these registration policies, the labor exchange services to veterans will be evaluated not on the general veteran population served by the public labor exchange, but by those veterans receiving intensives services. Similarly, two respondents expressed concern that the new measures will not measure the success or failure of the self-service and automated systems, unless all veterans who use self-service are registered. Two respondents voiced concerns that without a National, uniform policy for registration, data will not be available for State-to-State comparisons that are valid or reliable. However, another respondent encouraged VETS to allow States to establish their own registration policies for self-service. Another respondent asked for clarification that, as the public labor exchange measures are modified, VETS measures will also be modified to maintain consistency.

Response: States have the option of registering self-service customers. As a result, VETS, in conjunction with the USES, has decided not to implement a policy that will require registration or establish mandatory performance measures for users of self-service tools. To maintain consistency with the performance measures for the public labor exchange, VETS will use the registration policies defined in the ET Handbook 406. A veteran job seeker customer is counted as registered during the quarter in which registration occurs (registration quarter) and the subsequent three quarters. Registration is the date of registration or re-registration, and the registration year is the quarter of registration plus the following three quarters. A veteran job seeker who engages in a labor exchange activity after a registration year expires will begin a new registration year, and will once again be eligible to be counted in the measures.

For purposes of reporting, the rolling four quarter period concept will be used. As specified in the ET Handbook 406, the ETA 9002A (quarterly services report for all applicants), and the ETA 9002B (quarterly services report for veteran applicants) will provide data on persons who either registered or received services within the four quarter reporting period. The 9002C (quarterly outcome report for all applicants), and 9002D (quarterly outcome report for veteran applicants) will report the outcomes available on services provided to all registered job seekers, and to veteran job seekers for the four quarter reporting period. The rolling four quarter reporting period eliminates the concept of a carry-over registration from one program year to the next and provides uniformity for registration across States.

As the performance measurement system for the public labor exchange is modified, VETS will continue to coordinate with USES to ensure as much consistency as possible between the VETS measures and the ETA measures for the public labor exchange.

Comment: Other respondents expressed concern about the use of wage records, specifically the delay in the availability of wage data and the difficulty in obtaining access to wage data for Federal employees, military employees, interstate data, and occupations where employers do not regularly submit wage data to State agencies. One respondent recommended that consideration be given to adding a line item to the United States Department of Labor budget to cover the costs of States' use of the Wage Record Interchange System. Two respondents voiced concerns about the additional costs of reporting that are not borne by the DVOP and LVER grants. A final respondent suggested revisiting the economic model used by the Job Training Partnership Act where considerations such as unemployment rates and labor market conditions are factored into the results to evaluate outcomes.

Response: The three final performance measures rely heavily on wage record data for calculation. VETS acknowledges that the time lags and lack of coverage of all employers that are associated with Unemployment Insurance (UI) wage record data will pose significant challenges as States transition to this new way of measuring the performance of the public labor exchange's services to veterans. VETS continues to support the use of wage record data for performance measurement of the public labor exchange's services to veterans. Use of UI wage records is consistent with the performance measurement systems established for WIA and for the public labor exchange. The use of wage record information will ease the burden of administrative follow-up inherent in the current reporting system for the public

labor exchange. In conjunction with the USES, VETS will be developing methods to adjust for economic conditions and characteristics of registered veteran job seekers, to use in establishing performance goals and for interpreting final performance levels compared to the rates established in the base line year. In addition, VETS is working with USES to develop data validation procedures to support quality control in performance measurement and data collection.

Comment: One respondent requested further clarification about the decision not to pursue the earnings gain measure that VETS tested with historical data in six States in the summer of 2000.

Response: During our analysis of the test of proposed measures in the Summer of 2000, VETS determined that results of the test did not sufficiently demonstrate that States could produce this measure validly and reliably due to differences in the way the States processed the data for this measure. In addition, VETS determined that the earnings gain measure was not an effective measure for the public labor exchange since there is no control over which jobs applicants choose. Thus, VETS decided not to use earnings gain as a performance measure.

Comment: Other comments focused on issues pertaining to the implementation of the performance measures. Three respondents asked for clarification that the performance measures are to be applied at the State level, and that States should have the authority to negotiate and establish standards at the sub-State level with local workforce investment boards. Another respondent asked for clarification of whether the five percent variance will be for the total standards or the negotiated performance standards. A final respondent asked for clarification about the time frames for establishing expected performance levels, when performance levels may be renegotiated, and the impact of receiving an incentive or renegotiating downward the initial performance levels.

Response: The VETS performance standards are intended to measure, at the State level, the effectiveness of services provided to veterans. The State Directors of Veterans' Employment and Training (DVETs) and representatives from the State agencies will negotiate the expected levels of performance, based on past performance by the entire public labor exchange system in their State. State agencies retain the authority to negotiate and establish performance standards with the local workforce investment areas in their State. The five percent variance applies to each of the negotiated performance standards, developed through the use of two years of data if possible, but not less than one year, to establish baseline data for each performance measure. In the absence of established baseline data, negotiations between DVETs and State agencies will form the basis of performance standards for the transition year of PY 2002. Data from PY 1999 and PY 2000 should serve as the basis for establishing performance levels for PY 2002. In addition, VETS is seeking several States willing to pilot new performance standards based on data for the past two program years replicating outcomes on the proposed performance measures.

Comment: One respondent also stated concerns about the implications that VETS might withhold grant funds to support incentives for States with ''exemplary performance''. Another respondent suggested that VETS include incremental incentives in the definition of performance standards.

Response: VETS is exploring the feasibility of initiating an incentive program for exemplary performance in service to veterans by a State's public labor exchange system. Should this incentive program be implemented, VETS does not intend to withhold any grant funds from State agencies to support this program.

Comment: One respondent suggested that the baselines for each measure should not be developed by each State in negotiation with the DVET. Rather, VETS should establish a National formula and time frames to develop a year of baseline data. Another respondent stated that the process for negotiating baselines using prior data seems unnecessary, and that the first cycle of data following July 2002 (PY 2002) should be the basis for States' negotiations with DVETs.

Response: VETS intends for each State to develop baseline data based on their past performance. This allows for consideration of economic conditions, new business start-ups, State legislation, and other factors which might impact on an individual State's performance. Thus, as with the negotiations for performance measures under Title I of WIA, States are given the flexibility to develop their own baseline data.

Comment: One respondent suggested that comparisons be restricted to comparing veteran outcomes against veterans served, rather than comparing veterans against the total population of job seekers served by the public labor exchange. The respondent also suggested counting the number of transactions and the number of times an individual is served.

Response: Beginning in PY 2002, comparisons of services to veterans versus service to other groups will not be used as a quantitative performance measure. The new VETS performance measures do not include comparisons of veteran job seeker services or outcomes to those of other populations served by the public labor exchange. The intent of the new measures is to encourage a State's public labor exchange system to improve its services to veterans, as compared to its previous years' performance. These improvements will be demonstrated by the three outcome measures: Veteran Job Seeker Entered Employment Rate, Veteran Job Seeker Employment Retention at Six Months, and Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services, rather than counts of the number of services provided. Counts of services provided are more process-oriented, and do not reflect VETS' emphasis on outcomes.

Comment: One respondent asked for clarification about the definition of Disabled Veteran and Special Disabled Veteran, if the registrant did not serve over 180 days.

Response: The VETS performance measures and other reporting requirements for services to veterans by the public labor exchange will use the legal definition of veteran as established by section 4211 of Title 38, U.S.C. As this relates to disabled veterans, if the applicant did not serve on active duty for over 180 days, then he/she must have been discharged or released with other than a dishonorable discharge, and have been discharged or released because of a service-connected disability.

Comment: One respondent noted that the VETS measures do not distinguish among the One-Stop partners, public labor exchange staff, or other employment security staff such as DVOP or LVER staff who serve veteran job seekers. Additionally, the respondent asked for clarification on how States should determine which VETS 200 Report is credited with service in the event that an LVER and a DVOP both serve the same individual. Another respondent stated that since only two measures are exactly consistent with the public labor exchange measures, States will have a more difficult time integrating veterans services into the entire One-Stop system.

Response: The intent of the VETS performance standards is to measure the services to veterans by the entire public labor exchange system. This system includes One-Stop partners, public labor exchange staff, and DVOP and

LVER staff. The measures are not designed to distinguish which particular program provided services to veteran job seekers. The specifications for generating the Veteran Job Seeker Entered Employment Rate measure and the Veteran Job Seeker Employment Retention Rate at Six Months measure are exactly the same as the public labor exchange measures, with the exception that the VETS measures restrict the applicant pool to veterans. The measure of Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services is an outcome that the USES is not measuring. This, however, is an outcome measure on services that are to be provided to veterans by the entire public labor exchange system. The revised ETA 9002B and D Reports are proposed to capture the necessary information about receipt of staff-assisted services and outcomes following these staff-assisted services. VETS, in conjunction with USES, has made every effort to minimize reporting burdens incurred by States while still requesting sufficient information to demonstrate that veteran job seekers receive suitable services from the public labor exchange. The specification for the revised VETS 200C Report provides procedures for generating reports of unduplicated counts of services to veteran job seekers by DVOP and LVER staff.

C. VETS Performance Measures

We establish three performance measures for the provision of services to veterans by the public labor exchange:

- Veteran Job Seeker Entered Employment Rate.
- Veteran Job Seeker Employment Retention Rate at Six Months.
- Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services.

The VETS performance measures apply to public labor exchange services provided to veterans as part of the One-Stop delivery systems implemented by the States. These services include those provided by DVOP and LVER staff and other public labor exchange staff employed through funds under the Wagner-Peyser Act. At their discretion, States may include other publicly-funded labor exchange services in this measurement system for services to veterans.

The VETS performance measures apply to all individuals who meet the definition of eligible veteran or other eligible, as established by sections 4101 and 4211 of Title 38, U.S.C. An eligible veteran is a person who served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge; or was discharged or released from active duty because of a service-connected disability; or a member of a reserve component who served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released with other than a dishonorable discharge.

Other eligible persons must fit the following criteria, established in section 4101(5) (A), (B), and (C) of Title 38, U.S.C.:

—The spouse of any person who died of a service-connected disability;

—The spouse of any member of the Armed Forces serving on active duty, who at the time of application, is listed in one or more of the following categories and has been so listed for a total of more than ninety days: (i) Missing in action, (ii) captured in the line of duty by a hostile force, (iii) forcibly detained or interned in the line of duty by a foreign government of power; or

—The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability.

A veteran job seeker is counted as a registered veteran job seeker during the quarter in which the registration occurs (registration quarter), and the subsequent three quarters. This four quarter period constitutes the registration year. A registered veteran job seeker who receives services during the fourth quarter after the registration quarter will begin a new registration year, or will be considered re-registered. This veteran job seeker will be counted again during each of the four reporting periods covering the subsequent registration year. If the veteran job seeker's registration year lapses, and after some time he or she returns to the public labor exchange, that job seeker would begin a new registration year.

The VETS performance measures are defined below.

(1) Veteran Job Seeker Entered Employment Rate (VJSEER)

The count of registered job seekers who are veterans and who, in the first or second quarter following the registration quarter (Q_{+1} or Q_{+2}), earned wages from a new or different employer than that from which the registered veteran job seeker earned wages in the quarter prior to registration (Q_{-1}), divided by the difference between the count of veteran job seekers who registered or re-registered with the labor exchange during any of the previous four calendar quarters and the count of any of those veteran job seekers whose wages earned in the first and second quarter following registration were exclusively with the same employer from which wages were earned in the quarter prior to registration.

This measure contains the following elements.

Entered Employment with a New Employer: To be counted as successfully entering employment, the veteran applicant must, in the first or second quarter following the quarter of registration (Q_{+1} or Q_{+2}), earn wages from a different employer than from whom he/she earned wages in the quarter prior to registration (Q_{-1}).

Registered Veteran Job Seeker: Veteran job seekers are considered to be registered for a four quarter period beginning with their registration quarter and the subsequent three quarters (registration year). Veteran job seekers who engaged in a labor exchange activity after their registration year has expired, will be re-registered and will then begin a new registration year.

Quarter of Registration: The calendar quarter in which a veteran job seeker completed an initial registration with the public labor exchange (Q_0) or in which a previously registered job seeker began a new registration year.

A veteran job seeker may be employed or unemployed at the time of registration. The key factor that determines whether the veteran job seeker is counted in the entered employment rate is if he/she earns wages with a new employer in the follow-up quarters after the registration quarter. A successful employment outcome is determined by comparing the Employer Identification Numbers (EIN) of registered veteran job seekers' employers prior to and following registration based on information contained in the UI wage record database, the State Directory of New Hires database, or other available records. Veteran job seekers who remain employed exclusively with the same employer(s) (those found in $Q-1$) during the measurement period are excluded from the calculation.

(2) Veteran Job Seeker Employment Retention Rate at Six Months (VJSERR)

The count of the number of registered veteran job seekers who are veterans age 19 and older at the time of registration, who in the first or second quarter following registration (Q_{+1} or Q_{+2}), earned wages from a new or different employer than that from which the applicant earned wages in the quarter prior to registration (Q_{-1}), and who also continued to earn wages in the second

quarter following the quarter in which they entered employment (Q_{+3} or Q_{+4}), divided by the number of veteran job seekers who entered employment during the reporting period.

This measure contains the following elements.

Entered Employment with a New Employer (age 19 and older): The base, or the denominator, of the VJSERR measure is the number of veteran job seekers age 19 and older at the time of registration who enter employment with a new employer in the first or second quarter after the quarter of registration. The process for determining entered employment is described above in the VJSERR section.

Retained Employment Two Quarters after Entered Employment with a New Employer (age 19 and older): To be counted in this measure, veteran job seekers must earn wages in the second quarter following the quarter in which they entered employment with a new employer. If a veteran job seeker enters employment in the first quarter after registration, then this measure will check to see if he/she is still earning wages in the third quarter after the quarter of registration. If the veteran job seeker enters employment in the second quarter following the quarter of registration, then this measure will check to see if he/she is still earning wages in the fourth quarter after registration.

Successful employment retention is recorded for veteran job seekers, age 19 and older at the time of registration, who are determined to have entered employment according to the entered employment rate measure, and who earned wages with any employer in the second quarter following the quarter in which they were first determined to have entered employment.

(3) Veteran Job Seeker Entered Employment Rate Following Receipt of Staff-Assisted Services (VERS)

The count of registered job seekers who are veterans and who, in the quarter of registration (Q_0) or in the first or second quarters following the quarter of registration (Q_{+1} or Q_{+2}) received staff-assisted services and who in the first or second quarter following the registration quarter (Q_{+1} or Q_{+2}) earned wages from a new or different employer than that from which the registered job seeker earned wages in the quarter prior to registration (Q_{-1}); divided by the difference between the count of job seekers who are veterans who registered or re-registered with the labor exchange during any of the previous four calendar quarters and who in the first or second quarter following registration (Q_{+1} or Q_{+2}) received staff-assisted services, and the count of any of those same job seekers whose wages earned in the first or second quarter following registration (Q_{+1} or Q_{+2}) were exclusively with the same employer from which wages were earned in the quarter prior to registration (Q_{-1}).

This measure contains the following elements.

Received Staff-Assisted Services: The elements of staff-assisted services can be found in the Revised ET Handbook 406. These elements were developed in consultation with the USES workgroup of State representatives, officials from the National Association of State Workforce Agencies, and staff from VETS and ETA National and Regional offices. Draft Specifications for the ET 406 Handbook were published in the **Federal Register** on June 6, 2001 (66 FR 30487 et seq.).

Entered Employment with a New Employer: To be counted as successfully entering employment, the veteran applicant must meet the entered employment criteria as described in measure (1) above, and have received staff-assisted services during the measurement period ($Q_0 - Q_{+2}$), as reported on the ETA 9002 Reports.

D. Levels of Performance and Rules for Application

VETS will use the WIA Title I framework (published in Training and Employment Guidance Letter No. 8–99) which was also used for negotiating and setting expected performance levels for public labor exchange services. Accordingly, States, in conjunction with their DVET, will develop baseline data for each of the measures based on historical data, analyze the baseline data, and propose performance levels for each measure based on that analysis. Each State will negotiate with its DVET to obtain mutually agreed upon expected levels of performance.

In developing baseline data, States should use two years of data if possible, but not less than one year in determining trends for performance and factors which may influence performance. In establishing expected performance levels for each measure, factors beyond the control of the State are also to be considered. When submitting their proposed performance levels, States should be prepared to provide support for their proposed levels by providing baseline performance data, the methodology for developing baseline data, and a description of data sources.

The Regional Administrator for Veterans' Employment and Training (RAVET) will review the negotiated levels of performance as submitted through the DVET and will compare the expected performance levels with the National averages, baseline information from other States, and the negotiated levels of performance established for other States, while taking into account factors including differences in economic conditions and other factors as discussed above. The RAVET will analyze the quality of the data presented by States, including the relevance of the data, the source of the data, the time period from which the data were drawn, and if the data are part of a trend or anomalous. Established GPRA Annual Performance Plan goals for relevant measures will also be an important part of the Regional review and negotiation of performance levels. When the RAVET's analysis is completed, if need be, there will be the opportunity, through the DVET, for negotiations with the State to obtain mutually agreed upon expected levels of performance. Provisions will also be made for renegotiation of performance levels if circumstances arise that result in a significant change in the factors used to establish the original levels. It is understood that either a State or VETS may elect to renegotiate performance as new information becomes available. Factors which will be considered for making changes include those discussed above.

During the first year of implementation of the new performance measures in PY 2002, performance will be reviewed as follows: States will be held harmless from any consequences of failing to meet their performance goals. Actual performance for each program year will be compared to negotiated performance levels. If a State's actual performance varies from the expected performance level by minus two percent or more, VETS will have the option of renegotiating new performance levels with the State. VETS will offer technical assistance as well as giving consideration to external factors affecting performance levels. A negative variation of five percent or more would result in the requirement of a State Corrective Action Plan (CAP) to rectify the situation. Failure to submit or comply with a CAP could become the basis for sanctions.

Signed at Washington, DC, this 16th day of April.

Frederico Juarbe Jr.,

Assistant Secretary, Veterans' Employment and Training Service.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1432/P.L. 107–160
To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''. (Apr. 18, 2002; 116 Stat. 123)

H.R. 1748/P.L. 107–161
To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the ''Tom Bliley Post Office Building''. (Apr. 18, 2002; 116 Stat. 124)

H.R. 1749/P.L. 107–162
To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the ''Herbert H. Bateman Post Office Building''. (Apr. 18, 2002; 116 Stat. 125)

H.R. 2577/P.L. 107–163
To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the ''Bob Davis Post Office Building''. (Apr. 18, 2002; 116 Stat. 126)

H.R. 2876/P.L. 107–164
To designate the facility of the United States Postal Service located in Harlem, Montana, as the ''Francis Bardanouve United States Post Office Building''. (Apr. 18, 2002; 116 Stat. 127)

H.R. 2910/P.L. 107–165
To designate the facility of the United States Postal Service located at 3131 South Crater Road in Petersburg, Virginia, as the ''Norman Sisisky Post Office Building''. (Apr. 18, 2002; 116 Stat. 128)

H.R. 3072/P.L. 107–166
To designate the facility of the United States Postal Service located at 125 Main Street in Forest City, North Carolina, as the ''Vernon Tarlton Post Office Building''. (Apr. 18, 2002; 116 Stat. 129)

H.R. 3379/P.L. 107–167
To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the ''Raymond M. Downey Post Office Building''. (Apr. 18, 2002; 116 Stat. 130)

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