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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–12 of January 17, 2003

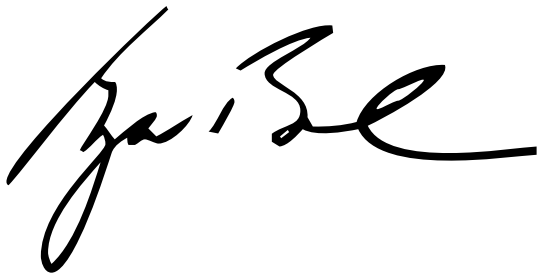
Presidential Determination on Extending Waiver of Section 907 of the FREEDOM Support Act with Respect to Assistance to the Government of Azerbaijan

Memorandum for the Secretary of State

Pursuant to the authority contained in Title II of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby determine and certify that extending the waiver of section 907 of the FREEDOM Support Act of 1992 (Public Law 102–511):

- is necessary to support United States efforts to counter international terrorism;
- is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism;
- is important to Azerbaijan's border security; and
- will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of section 907 of the FREEDOM Support Act. You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 17, 2003.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–19–AD; Amendment 39–13024; AD 2003–02–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–50 and CF6–80C2 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company CF6–50 and CF6–80C2 turbofan engines. This amendment requires replacement of certain existing CF6–50 and CF6–80C2 low pressure turbine (LPT) shrouds with new design LPT shrouds. This amendment is prompted by 37 LPT uncontained events on the CF6–50, 24 uncontained events on the CF6–80C2 engine models since 1993, and the development and certification of newly designed shrouds that will improve LPT containment capability. The actions specified by this AD are intended to prevent uncontained engine failure and possible airplane damage.

DATES: Effective March 3, 2003.

ADDRESSES: Information regarding this action 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.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company CF6–50 and CF6–80C2 turbofan engines was published in the **Federal Register** on May 17, 2001 (66 FR 27475). That action proposed to require replacement of certain existing CF6–50 and CF6–80C2 LPT shrouds with new design shrouds.

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.

Request Withdrawal of Proposed Rule

Five commenters request that the proposed rule be withdrawn. The commenters believe that the new LPT shrouds will not prevent or significantly reduce the occurrence or severity of the more severe (SAE Category 2 or higher) uncontained events, and therefore, the economic impact is not justified by this limited improvement in safety. The commenters provided statistics to show that the vast majority (89%) of the uncontained LPT events were SAE Category 1 with no aircraft impact, and were, therefore, no hazard to continued safe flight. Data was also provided that showed that none of the Category 2 events had caused more than minor aircraft damage, and that corrective actions (*i.e.* inspection or replacement programs; some required by existing AD's) were available from the manufacturer to address the majority of the root causes that had led to the Category 2 events.

The FAA partially agrees. The FAA agrees that because the design criteria for the shrouds is based on ballistic containment calculations, it is difficult to quantify a benefit for the improved LPT shrouds for rub-through or push-through events. However, the FAA disagrees that the improved shrouds will not provide some additional benefit for those events where the LPT uncontainment was not exclusively of a ballistic nature. Although the events occurring to-date have not resulted in significant hazards to continued safe flight, the potential exists for future events to be more significant. Therefore, in addition to requiring that the root causes for the upstream failures that have led to uncontained LPT events be addressed, the FAA believes that the improved LPT shrouds must be incorporated to meet the intent of the regulations, which is for the engines to contain failures at the engine case level.

Extend or Eliminate Compliance End Date

Seven commenters request that the compliance end date be extended or eliminated. The commenters noted that all of the CF6–50 models would likely be in compliance by that date based on their estimated shop visit and LPT exposure rates, but that many CF6–80C2 engines would be forced off-wing early solely for this compliance, thereby imposing a significant financial burden that was not included in the economic analysis of the proposal.

The FAA agrees that the intended improvement in safety can be achieved by extending the compliance end date to support the normal shop visit and LPT exposure rates and, therefore, the proposed calendar end date is changed in the final rule.

Request for Exemption of Certain LPT Cases and LPT Shroud Configurations

Four commenters request that engines configured with a certain LPT case configuration and certain LPT shroud configurations be exempt from the proposed AD. The commenters note that the improved LPT case, part number (P/N) 1647M68G15, introduced by GE Aircraft Engines Service Bulletin (GEAE SB) 72–0946 in conjunction with certain LPT shrouds provides equivalent containment to the older design LPT case with the newest shrouds referenced by the proposed rule.

The FAA agrees. The manufacturer has provided data to show that CF6–80C2 engines configured with the later LPT cases and certain LPT shrouds provide equivalent containment capability. Therefore, CF6–80C2 engines configured with the combination of LPT case, P/N 1647M68G15, and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud P/N 1862M64G01 or 1862M64G03 are exempted from this rule. The final rule is revised to reflect this change, and the economic analysis of the final rule is reduced to reflect this change.

Request for Relaxed Compliance Requirements

Three commenters request that relaxed compliance requirements be provided for engines with certain configurations that reduce the probability of an upstream failure that has been known to result in the higher severity uncontained LPT events. The commenters believe that addressing the root causes of the uncontained LPT failures will be more effective than the new shrouds for improving containment and reducing the frequency and severity of the events.

The FAA partially agrees. The FAA agrees that upstream failures that lead to uncontained LPT events must be addressed and has already mandated corrective actions for many of those known failure mechanisms. However, as stated in the proposed rule, not all such possible upstream failure modes can be predicted or anticipated. Therefore, the FAA disagrees that relaxed compliance schedules for engines configured with certain root cause fixes will achieve the necessary safety improvement that will be realized by incorporation of the improved LPT shrouds. No changes will be made to this AD.

Request for Equivalent Replacement Parts

Five commenters request that any FAA-approved Parts Manufacturing Approval (PMA) or repaired configurations of the manufacturer's design be allowed as equivalent replacement parts for the GE service bulletin parts.

The FAA agrees. The final rule is revised to include all of the known FAA-approved equivalent parts for each of the engine models as acceptable configurations.

Service Bulletin Accepted as Compliance to Proposed Rule

One commenter requests that GE CF6–50 SB 72–1170, Revision 1, dated November 30, 1999, be accepted as compliance for the proposed rule. The commenter notes that this revision clarifies the engines that are affected by explicitly listing all of the earlier shroud part numbers that should be replaced with the new shroud part numbers.

The FAA partially agrees. The FAA agrees that the revised SB provides additional clarification on the affected engines. However, as noted in the FAA response to the previous comment on equivalent replacement parts, there are other parts in addition to those referenced in that SB that can be used to comply with this AD. The final rule is changed to eliminate the incorporation by reference of any version of the SB.

Analysis Request To Quantify Containment Improvement

One commenter requests that an analysis be provided to quantify the containment improvement provided by the new shrouds. The commenter believes that the new design shrouds do not improve the containment capability as intended because the minimum thickness of the shear section is not changed.

The FAA disagrees. The FAA feels that the containment capability of the shrouds can not be determined based on shear section thickness alone. No changes will be made to this AD.

Request for Engine Containment Test

One commenter requests that the OEM be required to perform an engine containment test to demonstrate the effectiveness of the new design shrouds. The commenter believes that other OEM's have been required to perform such tests in order to substantiate improved containment. The commenter believes that the high cost of compliance with the proposed rule warrants such a test demonstration.

The FAA does not agree. The regulations for the most part address primary blade containment. Test demonstrations for secondary failure modes, due to multiple upstream failures, as in this case, are not normally required. In addition, the regulations allow the use of analysis in lieu of a test demonstration, and a test is not always required for substantiation. No changes will be made to this AD.

Request To Limit the Number of Times a Shroud Can Be Repaired

One commenter requests that the proposed rule be revised to limit the number of times a shroud can be repaired. The commenter notes, as stated in the proposal, that multiple repairs can lead to reduced backsheet thickness and result in reduced containment system capability.

The FAA partially agrees. The FAA agrees that multiple repairs can possibly result in reduced backsheet thickness. However, the FAA disagrees that the specific number of repairs that will result in this condition can be defined. Instead, the engine manufacturer has made modifications to the engine manual to require a check of the backsheet thickness in order to determine the serviceability of the shroud. Compliance with the revised manual limit will ensure that the minimum backsheet thickness required to achieve the system containment capability is maintained. No changes will be made to this AD.

Request for Revision to Notice of Proposed Rulemaking (NPRM)

One commenter requests that the proposed rule be revised to include improved stage 1 and stage 5 shrouds for the CF6–80C2. The commenter believes that a recent in-service event indicates that improved containment is necessary in stages 1 and 5 as well as stages 2, 3, and 4 that have already been proposed. The commenter recommends that an engineering analysis be performed to verify that these additional shrouds are adequate to prevent the failure mode recently demonstrated in plane 5 of the LPT.

The FAA does not agree. The most recent event referred to by this commenter exhibited an unusual variation of LPT uncontainment in which an extensive rub-through occurred in plane 5. The shrouds mandated for incorporation by this rule were redesigned primarily to address ballistic type containment events at stages where field experience and the manufacturer's analysis had shown deficiencies. In addition, the manufacturer has advised the FAA that although new part numbers for stage 1 and stage 5 LPT shrouds were introduced to the field at the same time as the stage 2 through 4 shrouds, the redesigns of those shrouds were made primarily to improve manufacturing and would have no appreciable affect on ballistic containment capability and no affect on the rub-through type of failure. Potential redesigns to address the case rub-through scenario are under consideration. Further rule making activity to address the rub-through failure scenario will be considered once redesigns are certified. No changes will be made to this AD.

Request for Additional Replacement Criteria

One commenter requests that replacement be allowed on the basis of attrition only and that minimum dimensional requirements be defined or other repairs be developed for the existing shrouds to allow these shrouds to be returned to service in lieu of the new shrouds. The commenter believes that an equivalent level of safety can be achieved with properly repaired or restored versions of the current shroud design while reducing the cost burden of the proposed rule on the operators.

The FAA partially agrees. The FAA agrees that the existing shrouds may be repaired in such a way as to restore the original or achieve the latest design capability. Such repairs that have been

approved by the FAA and are known to the FAA have been included as equivalent parts for compliance with this rule. Also the engine manufacturer has updated their manuals to include minimum dimensional requirements for repairability and serviceability of their parts. The FAA disagrees that replacement by attrition will ensure the intended improvement in safety. No changes will be made to this AD.

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

There are approximately 5,055 GE CF6–50 and CF6–80C2 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1,006 engines installed on airplanes of U.S. registry would be affected by this AD. Because this AD calls for the replacement of shrouds at piece part exposure, the FAA does not expect that additional labor costs will be accrued beyond that normally required to remove the existing shroud. New shrouds will cost approximately $63,250 for the CF6–50 engines, and $87,020 for the CF6–80C2 engines. Based on these figures, the total cost to retrofit all installed U.S. registered engines is estimated to be $76,393,990 over an eight year period, or $9,549,248 annually.

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) 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 adding a new airworthiness directive to read as follows:

2003–02–07 General Electric Company: Amendment 39–13024. Docket No. 2001–NE–19–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–50 and CF6–80C2 turbofan engines, except CF6–80C2 engines configured with the combination of low pressure turbine (LPT) case, part number (P/N) 1647M68G15; and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud, P/N 1862M64G01 or 1862M64G03. These engines are installed on, but not limited to, DC–10–15, DC–10–30, MD11, 747, 767, A300 and A310 airplanes.

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

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

To prevent uncontained engine failure and possible airplane damage, do the following:

CF6–80C2 Engines

(a) For CF6–80C2 engines configured with the combination of low pressure turbine (LPT) case, part number (P/N) 1647M68G15; and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud, P/N 1862M64G01 or 1862M64G03, no further action is required.

(b) At the next shroud piece-part exposure, but no later than July 31, 2010, remove existing stage 2, 3, and 4 LPT CF6–80C2 shrouds and replace with new design P/N's listed in the following Table 1:

TABLE 1.—CF6–80C2 ACCEPTABLE NEW SHROUD PART NUMBERS

Stage	Part No.
2	2083M12G01, PCT2083M12G01, KT2083M12G01, or H042 [1]
3	2083M13G01, PCT2083M13G01, KT2083M13G01, or H042 [1]
4	2083M14G01, PCT2083M14G01, KT2083M14G01, or H042 [1]

[1] Parts marked with H042, H036, or H037 are parts that have been repaired by an FAA-approved process specification. In addition to this process specification marking, each part must show its original (*i.e.* before repair) part number and a work order number (*i.e.* WOxxxxx).

CF6–50 Engines

(c) At the next shroud piece-part exposure, but no later than July 31, 2010, remove existing stage 1, 2, 3 and 4 LPT CF6–50 shrouds and replace with new design P/N's as listed in the following Table 2:

TABLE 2.—CF6–50 ACCEPTABLE NEW SHROUD PART NUMBERS

Stage	Part No.
1	1822M35G01, PCT1822M35G01, KT1822M35G01, or H036 [1]
2	1822M36G01, PCT1822M36G01, KT1822M36G01, or H037 [1]
3	1822M36G02, PCT1822M36G02, KT1822M36G02, or H037 [1]
4	1822M37G01, PCT1822M37G01, KT1822M37G01, or H037 [1]

[1] Parts marked with H042, H036, or H037 are parts that have been repaired by an FAA-approved process specification. In addition to this process specification marking, each part must show its original (*i.e.* before repair) part number and a work order number (*i.e.* WOxxxxx).

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

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

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on March 3, 2003.

Issued in Burlington, Massachusetts, on January 17, 2003.

Francis A. Favara,

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

[FR Doc. 03–1675 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–07–AD; Amendment 39–13012; AD 2003–01–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 36, A36, A36TC, B36TC, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–01–01, which was published in the **Federal Register** on January 8, 2003 (68 FR 997), and applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. We inadvertently omitted certain regulatory text to remove AD 2000–26–16, Amendment 39–12066, from 14 CFR part 39. This action corrects the regulatory text.

EFFECTIVE DATE: The effective date of this AD remains February 27, 2003.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 30, 2002, FAA issued AD 2003–01–01, Amendment 39–13012 (68 FR 997, January 8, 2003), which applies to certain Raytheon Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. This AD retains the actions required in AD 2000–26–16 and adds additional airplane models to the applicability section of this AD.

Need for the Correction

The FAA inadvertently omitted certain regulatory text to remove AD 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001) from 14 CFR part 39. This regulatory text is needed to ensure that the affected airplane owners/operators do not have unnecessary action performed on their airplanes.

Correction of Publication

Accordingly, the publication of January 8, 2003 (68 FR 997), of Amendment 39–13012; AD 2003–01–01, which was the subject of FR Doc. 03–148, is corrected as follows:

§ 39.13 [Corrected]

On page 998, in section 39.13 [Amended], 2., replace the current paragraph with the following text: ''FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001), and by adding a new AD to read as follows:

2003–01–01 Raytheon Aircraft Company: Amendment 39–13012; Docket No. 2002–CE–07–AD; Supersedes AD 2000–26–16, Amendment 39–12066.''

Action is taken herein to correct this reference in AD 2003–01–01 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains February 27, 2003.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1674 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Friday, January 3, 2003, (68 FR 261). It corrects an error in the effective date and adds the Ainsworth VOR/DME to the definition of Class E2 airspace at Ainsworth, NE. The final rule established Class E2 airspace and modified Class E5 airspace at Ainsworth, NE.

DATES: The final rule published on January 3, 2003 (68 FR 261) is effective 0901 UTC, March 20, 2003. Comments for inclusion in the Rules Docket must be received on or before February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–62 published on Friday, January 3, 2003 (68 FR 261) establish Class E2 airspace and modified Class E5 airspace at Ainsworth, NE. The Class E2 airspace was defined with reference to the Ainsworth VOR/DME but the precise location of the Ainsworth VOR/DME was omitted. The effective date is corrected to coincide with a chart publication date.

Accordingly, pursuant to the authority delegated to me, the Class E2 airspace at Ainsworth, NE, as published in the **Federal Register** Friday, January 3, 2003 (68 FR 261), (FR Doc. 03–62), is corrected as follows:

§ 71.1 [Corrected]

On page 261, Column 3, second paragraph change ''EFFECTIVE DATE: 0901 UTC, February 20, 2003'' to read ''EFFECTIVE DATE: 0901 UTC, March 20, 2003.''

On page 262, Column 1, third paragraph from the bottom, correct the definition of Class E2 airspace as follows:

After ''(Lat. 42°34′45″ N., long. 99°59′35″ W.)'' add ''Ainsworth VOR/DME (Lat. 42°34′09″ N., long. 99°59′23″ W.''

Issued in Kansas City, MO, on January 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–1314 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30351; Amdt. No. 3042]

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, 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.

EFFECTIVE DATES: This rule is effective January 27, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2003.

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.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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) 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 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 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 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 designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to 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 of 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 in 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'' 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, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 17, 2003.

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 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

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

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/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2996	RNAV (GPS) Rwy 27, Orig-B.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2997	RNAV (GPS) Rwy 9, Orig-A.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2998	RNAV (GPS) Rwy 18, Orig-A.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/3000	RNAV (GPS) Rwy 36, Orig-A.
01/02/03	MA	Norwood	Norwood Memorial	3/0023	LOC Rwy 35, Amdt 9.
01/02/03	MA	Norwood	Norwood Memorial	3/0024	NDB Rwy 35, Amdt 9.
01/02/03	NM	Albuquerque	Albuquerque Intl Sunport	3/0031	ILS Rwy 8, Amdt 5C.
01/06/03	NY	Elmira	Elmira/Corning Regional	3/0113	ILS Rwy 6, Amdt 4.
01/06/03	NY	Elmira	Elmira/Corning Regional	3/0114	ILS Rwy 24, Amdt 18.
01/06/03	CO	Grand Junction	Walker Field	3/0116	LDA/DME Rwy 29, Orig-A, replaces 2/2548.
01/08/03	CA	San Jose	Reid-Hillview of Santa Clara County.	3/0180	RNAV (GPS) Rwy 31R, Orig.
01/09/03	NY	Montgomery	Orange County	3/0225	ILS Rwy 3, Amdt 1A.
01/09/03	NY	Montgomery	Orange County	3/0226	NDB Rwy 3, Amdt 4.
01/14/03	UT	Salt Lake City	Salt Lake City Intl	3/0326	ILS Rwy 16L, Amdt 1B.

[FR Doc. 03–1665 Filed 1–24–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30350; Amdt. No. 3041]

Standard Instruction 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: This rule is effective January 27, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 27, 2003.

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;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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: P.O. 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 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 of 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, were 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, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 17, 2003.

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 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

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

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 March 20, 2003

Cortez, CO, Cortez Muni, RNAV (GPS) RWY 3, Orig
Cortez, CO, Cortez Muni, RNAV (GPS) RWY 21, Orig
Cortez, CO, Cortez Muni, GPS RWY 3, Orig (CANCELLED)
Cortez, CO, Cortez Muni, GPS RWY 21, Orig (CANCELLED)
Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 1
Millen, GA, Millen, NDB RWY 17, Orig
Millen, GA, Millen, RNAV (GPS) RWY 17, Orig
Flora, IL, Flora Muni, RNAV (GPS) RWY 3, Orig
Flora, IL, Flora Muni, RNAV (GPS) RWY 21, Orig
Fayetteville, NC, Fayetteville Regional/Grannis Field, VOR RWY 4, Amdt 16
Fayetteville, NC, Fayetteville Regional/Grannis Field, VOR RWY 22, Amdt 6
Fayetteville, NC, Fayetteville Regional/Grannis Field, VOR RWY 28, Amdt 8
Fayetteville NC, Fayetteville Regional/Grannis Field, LOC BC RWY 22, Amdt 6
Fayetteville, NC, Fayetteville Regional/Grannis Field, ILS RWY 4, Amdt 15
Fayetteville, NC, Fayetteville Regional/Grannis Field, RNAV (GPS) RWY 10, Orig
Fayetteville, NC, Fayetteville Regional/Grannis Field, RNAV (GPS) RWY 22, Amdt 1
Fayetteville, NC, Fayetteville Regional/Grannis Field, RNAV (GPS) RWY 28, Orig
Glen Falls, NY, Floyd Bennett Memorial, VOR/DME or GPS RWY 19, AMDT 6B (CANCELLED)
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 12, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 19, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 30, ORIG
Montauk, NY, Montauk, RNAV (GPS) RWY 24, Orig
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 4
Pauls Valley, OK, Pauls Valley Muni, RNAV (GPS) RWY 35, Orig
Pauls Valley, OK, Pauls Valley Muni, GPS RWY 35, Amdt 1A (CANCELLED)
Isla De Vieques, PR, Antonio Rivera Rodriguez, RNAV (GPS) RWY 9, Amdt 1
Milbank, SD, Milbank Muni, RNAV (GPS) RWY 31, Orig
Bowie, TX, Bowie Muni, NDB RWY 17, Amdt 4
Bowie, TX, Bowie Muni, NDB RWY 35, Amdt 4
Bowie, TX, Bowie Muni, RNAV (GPS) RWY 17, Orig
Bowie, TX, Bowie Muni, RNAV (GPS) RWY 35, Orig
Dallas, TX, Addison, NDB RWY 15, Amdt 6
Dallas, TX, Addison, ILS RWY 15, Amdt 10
Dallas, TX, Addison, ILS RWY 33, Amdt 2
Dallas, TX, Addison, RNAV (GPS) RWY 15, Orig
Dallas, TX, Addison, RNAV (GPS) RWY 33, Orig
Dallas, TX, Addison, GPS RWY 33, Orig (CANCELLED)
Greenville, TX, Majors, LOC BC RWY 35, Orig
Norfolk, VA, Chesapeake Regional, ILS RWY 5, Orig
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Orig, CANCELLED
Oak Harbor, WA, Wes Lupien, RADAR 1, Amdt 1, (CANCELLED)
Mosinee, WI, Central Wisconsin, NDB RWY 17, Orig-B (CANCELLED)

[FR Doc. 03–1666 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 020913215–3002–01]

RIN 0691—AA45

Direct Investment Surveys: BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the quarterly survey of foreign direct investment in the United States, which is comprised of two forms—the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. This final rule amends 15 CFR part 806.15 to set forth revised reporting requirements for the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. BEA believes that these changes should result in no change in the overall respondent burden. Any increase in burden due to the addition of questions on the BE–605 Bank form will be offset by a reduction in burden for BHC's, because reporting for these entities will be more consistent with the filing of regulatory reports and annual reports to stockholders.

DATES: This final rule will be effective February 26, 2003.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On October 16, 2002 the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, (67 FR 63860–63861), a notice of proposed rulemaking setting forth revised reporting requirements for the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

Description of Revisions

The BE–605 and BE–605 Bank are mandatory surveys and are conducted quarterly by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send survey forms to potential respondents each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports will be due within 45 days. These surveys are cut-off sample surveys that cover all U.S. affiliates above a size-exemption level and seek to obtain data on transactions and positions between U.S. affiliates and their affiliated foreign groups.

This final rule directs bank holding companies (BHC's) to file a fully consolidated report, including all banking and nonbanking operations, on the BE–605 Bank form. Previously, the banking and nonbanking operations of a BHC filed separate reports: the nonbank operations of the BHC filed on the BE–605 form, and the BHC itself and its banking operations filed on the BE–605 Bank form. To reduce respondent burden, BHC's are now directed to file a single, fully consolidated, report to include both the banking and nonbanking operations on the BE–605 Bank form. However, separate reports still must be filed in those special instances where a U.S. affiliate's primary line of business is not in banking (or related financial activities), such as a manufacturer or retailer, but the affiliate also has a direct or indirect ownership in a BHC (or other banking activities such as U.S. wholesale or limited purpose banks). In these instances, the BHC, including all of its subsidiaries or units, must file on the BE–605 Bank form and the nonbanking operations not owned by the BHC must file on the BE–605 form. Questions have been added to the BE–605 Bank form to collect data on loans from or to the foreign parent group by nonbanking subsidiaries, included in the consolidated report, with operations in insurance, real estate, and leasing, to maintain consistency of the U.S. international transactions accounts with international statistical standards and avoid gaps in coverage. In addition, questions have been added to the BE–605 Bank form to collect detail on intercompany premiums earned and claims payable for insurance companies included in the consolidated report.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The quarterly survey is a cut-off sample survey that covers all U.S. affiliates above a size-exemption level and obtains data on transactions and positions between U.S. affiliates and their affiliated foreign groups. (The affiliated foreign group is (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 percent of the person below it up to and including that person which is not more than 50 percent owned by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 percent by the person above it.) The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. The data are disaggregated by industry of U.S. affiliate, by country of foreign parent, and, for selected items, by country of each member of the affiliated foreign group.

Executive Order 13132

This final rule does not contain policies with Federalism implications, as that term is defined in E.O. 13132.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management

and Budget (OMB) Control Number. This rule covers collections of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608–0009. The collection will display this control number.

An estimated 3,950 U.S. affiliates are expected to file responses quarterly, or 15,800 responses annually. The average burden for completing the BE–605 and BE–605 Bank remains unchanged at 1.25 hours per response, per quarter (five hours per year); the total annual respondent burden, from the current OMB inventory, also remains unchanged at 19,750 hours (15,800 responses times 1.25 hours average burden). This estimate covers the amount of time for respondents to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The burden estimates used in this submission are based upon experience with the same quarterly survey forms for several years and upon the burden estimates developed at the time of the benchmark survey.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0009, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $30 million are not required to report on the BE–605 or BE–605 Bank form. Accordingly, this action will relieve reporting burdens on small entities.

List of Subjects in 15 CFR Part 806

International transactions, economic statistics, foreign investment in the United States, penalties, reporting and recordkeeping requirements.

Dated: January 3, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(h)(1) and (2) are revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(h) * * *

(1) BE–605—Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $30,000,000, that does not qualify for reporting on form BE–605 Bank.

(2) BE–605 Bank—Transactions of U.S. Banking Affiliate with Foreign Parent: One report is required for each U.S. banking affiliate or U.S. bank holding company affiliate, including all of the subsidiaries and units of the bank holding company, exceeding an exemption level of $30,000,000.

* * * * *

[FR Doc. 03–1770 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–06–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') announces amendments to rule 7(m) of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition for a subclass of olefin fibers manufactured by the Dow Chemical Company (''Dow''), of Midland, Michigan. The amendments to rule 7(m) establish the subclass name ''lastol'' as an alternative to the generic name ''olefin'' for a specific subclass of elastic, cross-linked textile fibers defined in the amendments, and previously referred to by Dow as ''CEF.''

EFFECTIVE DATE: January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Section 4(b)(1) of the Textile Fiber Products Identification Act (''Act'') declares that a textile product will be misbranded unless it is labeled to show, among other elements, the percentages, by weight, of the constituent fibers in the product, designated by their generic names and in order of predominance by weight. 15 U.S.C. 70b(b)(1). Section 4(c) of the Act provides that the same information required by section 4(b)(1) (except the percentages) must appear in written advertisements if any disclosure or implication of fiber content is made regarding a covered textile product. 15 U.S.C. 70b(c). Section 7(c) directs the Commission to promulgate such rules, including the establishment of generic names of manufactured fibers, as are necessary to enforce the Act's directives. 15 U.S.C. 70e(c).

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making required fiber content disclosures on labels. Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

B. Procedural History

Dow applied to the Commission on October 18, 2001, for a new olefin fiber subclass name and definition, and supplemented its application with additional information and test data on December 12, 2001, January 16, 2002, and March 19, 2002.[1] Dow stated that its

[1] Dow's petition and supplements thereto are on the rulemaking record of this proceeding. This material is available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules of practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. The petition also may be viewed on the Commission's website at *www.ftc.gov.*

new cross-linked elastic fiber, CEF, is a manufactured olefin textile fiber with a cross-linked polymer network structure. Dow stated that CEF meets the broad definition of olefin fiber in the Textile Rules, 16 CFR 303.7(m), but differs from commercially available olefin fibers because of its elasticity and wide temperature tolerance, and thus is a good choice for easy-care stretch apparel applications.

Contending that the unique structure and characteristics of fibers made from CEF are inadequately described under existing generic names listed in the Textile Rules, Dow petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that Dow's proposed new fiber technically falls within rule 7(m)'s definition of ''olefin.'' [2] The Commission further determined, however, that Dow's application for a new subclass name and definition merited further consideration. Accordingly, on May 17, 2002, the Commission announced that it had issued Dow the designation ''DCC 0001'' for temporary use in identifying CEF fiber pending a final determination on the merits of its application. The Commission staff further analyzed the application, and on May 24, 2002 (67 FR 36551), the Commission published a notice of proposed rulemaking (''NPR'') detailing the technical aspects of Dow's fiber, and requesting public comment on Dow's application. On August 12, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

A. The Commission's Criteria for Granting a New Generic Fiber Subclass Name and Definition, and Related Issues

In the NPR, the Commission solicited comment on whether Dow's application meets the Commission's criteria for granting applications for new generic fiber subclass names. Specifically, does the proposed subclass fiber: (1) Have the same general chemical composition as an established generic fiber category; (2) have distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) do the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited? [3]

Within the established 24 generic names for manufactured fibers, there are four cases where such generic name alternatives may be used: (1) Pursuant to rule 7(c), 16 CFR 303.7(c), within the generic category ''polyester,'' the term ''elasterell-p'' may be used as an alternative generic description for a specifically defined subcategory of polyester fiber; (2) pursuant to rule 7(d), 16 CFR 303.7(d), within the generic category ''rayon,'' the term ''lyocell'' may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (3) pursuant to rule 7(e), 16 CFR 303.7(e), within the generic category ''acetate,'' the term ''triacetate'' may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (4) pursuant to rule 7(j), 16 CFR 303.7(j), within the generic category ''rubber,'' the term ''lastrile'' may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that Dow's fiber technically falls within rule 7(m)'s definition of olefin, it noted that Dow's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that CEF may fit within the current definition of olefin in rule 7(m), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden rule 7(m)'s definition of olefin to better describe the allegedly unique molecular structure and physical characteristics of CEF and any similar fibers (without creating a new subclass for CEF); (2) amend rule 7(m)'s definition of olefin by creating a separate subclass name and definition for CEF and other similar qualifying fibers within the olefin category; or (3) deny Dow's application because CEF fiber fits within rule 7(m)'s definition of olefin without need for any change.

B. The NPR

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from Dow's application, of CEF's chemical composition and physical and chemical properties.[4] As a result of CEF's fiber structure, Dow maintained that CEF has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any olefin fiber; (2) shape retention at temperatures in excess of 170° C, which enables CEF to survive rigorous manufacturing and consumer care processes; and (3) chemical resistance to solvents that typically dissolve conventional olefins. Dow asserted that olefin, widely recognized as a dependable carpet fiber that has no stretch or elastic recovery and poor high temperature stability, is an inappropriate categorization for the elastic olefin fiber, CEF, which is targeted for apparel applications. Dow stated that CEF will offer consumers a wider choice in garments containing stretch fabric, and contended that it would be confusing to consumers if CEF is called simply ''olefin.''

Dow, therefore, petitioned the Commission to establish the generic name ''lastol'' as an alternative to, and a subclass of, ''olefin.'' In addition, Dow proposed that the Commission add the following sentence to the current definition of olefin in rule 7(m) to define CEF and similar fibers as a subclass of olefin:

[2] Rule 7(m) defines ''olefin'' as ''[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section.'' 16 CFR 303.7(m). Rule 7(j)(1) defines ''rubber,'' in part, as ''[a] manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories: (1) [a] manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins.'' 16 CFR 303.7(j)(1). Dow's petition stated that CEF is not a rubber because CEF fibers have a low but significant level of crystallinity, whereas rubber fibers are not crystalline. In addition, CEF exhibits much higher tensile set (lower elastic recovery) than rubber when extended to greater than 100% elongation.

[3] The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.

[4] 67 FR 36551, at 36552–36554 (May 24, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the NPR.

Where the fiber is a manufactured cross-linked elastic fiber in which (a) the fiber-forming substance is a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit, and (b) the fiber exhibits substantial elasticity and heat resistance properties not present in traditional olefin fibers, the term lastol may be used as a generic description of the fiber.

The effect of Dow's proposed amendment would be to allow use of the name ''lastol'' as an alternative to the generic name ''olefin'' for the subcategory of olefin fibers meeting the further criteria contained in the sentence added by the proposed amendment.

2. Public Comments

The Commission received no comments on the NPR.

3. Discussion of the Three Criteria for Granting New Generic Subclass Names

a. CEF Fiber's Chemical Composition

The Commission has concluded that the materials Dow submitted show that although CEF has the same general chemical composition as other olefin fibers, it also has a molecular and fiber structure that differs from typical olefins. CEF is founded on metallocene-based polyolefin elastomer chemistry and is manufactured using a melt spinning process. After spinning, the fiber is cross-linked in order to prevent dissolution and impart high-temperature dimensional stability. After the cross-linking process, the polymer chains in the fiber are linked to one another via covalent bonds.

The interpolymer [5] in CEF has been made from ethylene and, typically, octene in excess of 30 weight percent using a constrained geometry catalyst, a member of the metallocene family. The catalyst allows precise control of the molecular architecture of the polymer, which prior to cross-linking has a narrow molecular weight distribution. As a result, the molecules in CEF are very similar in size and composition to each other. In contrast, typical olefin fiber manufactured today results from conventional multi-site catalyst technology (such as Ziegler-Natta catalysts). Consequently, typical olefin fiber has a broad compositional molecular weight distribution, and low or no comonomer content.

As a result of CEF's unique chemical structure, its high comonomer content, CEF has lower crystallinity and density than conventional olefin fibers. Unlike conventional olefin fiber where the polymer crystals are in lamellae form,[6] the crystals in the CEF fiber-forming substance are in fringed micelle form.[7] The fringed micellar crystalline morphology and the low, but significant, level of crystallinity in CEF, which differentiates it from rubber, impart elastic properties not seen in typical olefin fibers. Thus, Dow's application meets the first criterion for granting a new generic fiber subclass name.

b. CEF's Distinctive Properties Are a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure

1. *Elasticity.* The materials Dow submitted also show that the most notable characteristic (and of greatest importance to consumers) of CEF is its elasticity, which is superior to that of conventional olefin fiber. CEF's favorable stretch (at least five times its original length before breaking) and elasticity (stretching to twice its length and, when released, recovering to within 25 percent of its original length) are a direct result of its low level of crystallinity and its fringed micellar crystal form. As a result, CEF can be successfully used in clothing applications where stretch is desirable.

In contrast, conventional olefin fiber is more stiff and less elastic than CEF. Typical olefin fibers (in their manufactured, ''drawn,'' form) exhibit low elongation before breaking (typically less than 50%) and, therefore, cannot be used as successfully as CEF in apparel markets for stretch clothing.

2. *High Temperature Stability.* CEF's covalent cross-links connect adjacent polymer chains into a contiguous three-dimensional polymer network. Dow's materials show that this cross-linked polymer network structure allows CEF to maintain its shape and mechanical integrity above its crystalline melting temperature.[8] It appears that CEF retains its shape at temperatures up to 220° C, in excess of conventional olefin's melting point, which occurs at or below 170° C.

CEF's ability to withstand high temperatures has advantages for textile manufacturers who can use dye and process methods requiring temperatures in excess of 170° C. CEF also has advantages for consumers because they will be able to repeatedly wash, dry, and iron fabrics containing CEF at typical temperatures (up to 210° C) without destroying CEF's stretch properties. In contrast, since conventional olefin fiber loses its shape and mechanical integrity at temperatures ranging from 105–170° C, it cannot withstand as well as CEF the rigors of high heat and repeated launderings.

c. CEF's Distinctive Features Make the Fiber Suitable for Uses for Which Other Olefin Fibers Would Not Be Suited, or Would Be Significantly Less Well Suited

Based on Dow's submission, the Commission has concluded that conventional olefins are not suitable, or not as suitable, for imparting the significant elasticity to certain apparel fabrics, such as knits and wovens, that consumers may expect or desire, and that CEF is a suitable stretch component. Thus, Dow's application has satisfied the Commission that CEF is suitable for uses for which other olefin fibers are not suited, or not as well suited. Accordingly, the Commission agrees with Dow that the granting of a generic subclass name to describe CEF is of importance to the general public, and not just a few knowledgeable professionals. A new generic subclass name will enable consumers to identify textile fiber products containing CEF (and other elastic olefin fibers) that exhibit significant stretch, elasticity, and heat resistance.

4. Conclusion

Based on its review of the materials submitted by Dow, and in consultation with its expert, the Commission has concluded that CEF: (1) Has the same general chemical composition as an established generic fiber category (olefin); (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure (*e.g.*, elasticity and heat resistance); and (3) that its distinctive feature(s) make the fiber suitable for uses for which other fibers under the established olefin generic name would not be suited, or would be significantly less well suited. Consequently, the Commission has determined that there are sufficient differences between CEF and conventional olefins to merit a new subclass designation. Therefore, the Commission is amending rule 7(m) to adopt and define the generic subclass name ''lastol,'' and to allow use of the name ''lastol'' as an alternative to the generic name ''olefin'' for that subclass of fiber. Other companies that

[5] Interpolymer refers to polymers prepared by the polymerization of at least two different types of monomers, typically ethylene and octene.

[6] In lamellae form, the polymer chains are folded in the crystalline or ordered regions.

[7] In fringed micelle form, the polymer chains are extended and parallel to each other in the crystalline regions.

[8] CEF's cross-linked polymer network structure also allows CEF to maintain its integrity in solvents that typically dissolve conventional olefins.

manufacture fibers satisfying the definition also may use the subclass name in making required fiber content disclosures on labels.

The Commission has decided to simplify slightly the definition of ''lastol'' that Dow proposed and the Commission published for comment. The definition the Commission is adopting, however, is consistent with the definition, as proposed, as well as with the definition of ''olefin'' in rule 7(m). The new definition of ''lastol'' defines the fiber generically in terms of its chemical composition, and identifies its physical elasticity and heat resistance characteristics. In addition, the Commission is reducing the minimum percentage by weight of ethylene and other olefin unit constituting the polymer in the final definition of ''lastol'' from 99 percent, as proposed, to 95 percent to account for a small percentage of inorganic molecules in the fiber that, according to Dow, are not included in the polymer.

Accordingly, for the reasons discussed above, the Commission amends rule 7(m) of the Textile Rules by adding the following sentence at the end:

Where the fiber-forming substance is a cross-linked synthetic polymer, with low but significant crystallinity, composed of at least 95 percent by weight of ethylene and at least one other olefin unit, and the fiber is substantially elastic and heat resistant, the term *lastol* may be used as a generic description of the fiber.

III. Effective Date

The Commission is making the amendments effective today, January 27, 2003, as permitted by 5 U.S.C. 553(d), because the amendments do not create new obligations under the rule; rather, they merely create a fiber name and definition that the public may use to comply with the rule.

IV. Regulatory Flexibility Act

In the NPR, the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603–604, did not apply to the proposal because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendments would impose no additional obligations, penalties, or costs. The amendments simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that no substantial economic impact was overlooked, the Commission solicited public comment in the NPR on the effects of the proposed amendments on costs, profits, competitiveness of, and employment in small entities. 67 FR 36551, at 36554 (May 24, 2002).

No comments were received on this issue. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendments promulgated today will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

These amendments do not constitute ''collection[s] of information'' under the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR part 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

VI. Text of Amendments

For reasons set forth in the preamble, 16 CFR part 303 is amended as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

2. In § 303.7, paragraph (m) is amended by adding a sentence at the end, to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(m) * * * Where the fiber-forming substance is a cross-linked synthetic polymer, with low but significant crystallinity, composed of at least 95 percent by weight of ethylene and at least one other olefin unit, and the fiber is substantially elastic and heat resistant, the term *lastol* may be used as a generic description of the fiber.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–1739 Filed 1–24–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for oral use of lincomycin soluble powder to make medicated drinking water for administration to swine for the treatment of swine dysentery or to broiler chickens for the control of necrotic enteritis.

DATES: This rule is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64506–0457, filed ANADA 200–303 for Lincomycin Hyrochloride Soluble Powder. The application provides for oral use of lincomycin soluble powder to make medicated drinking water for administration to swine for the treatment of swine dysentery or to broiler chickens for the control of necrotic enteritis. Phoenix Scientific's Lincomycin Hyrochloride Soluble Powder is approved as a generic copy of Pharmacia & Upjohn's LINCOMIX Soluble Powder, approved under NADA 111–636. ANADA 200–303 is approved as of October 1, 2002, and the regulations are amended in 21 CFR 520.1263c to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and

information submitted to support approval of this application may be seen in 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.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1263c [Amended]

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (b) by removing ''and 051259'' and by adding in its place ''051259, and 059130''.

Dated: January 7, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–1685 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Pour-On

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for topical use of ivermectin on cattle for treatment and control of various species of external and internal parasites.

DATES: January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–340 for PRIVERMECTIN (ivermectin). The application provides for topical use of 0.5 percent ivermectin solution on cattle for the treatment and control of various species of gastrointestinal nematodes, lungworms, grubs, horn flies, lice, and mites. First Priority's PRIVERMECTIN is approved as a generic copy of Merial Ltd.'s IVOMEC Pour-On for Cattle, approved under NADA 140–841. The ANADA is approved as of December 4, 2002, and 21 CFR 524.1193 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in 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.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

2. Section 524.1193 *Ivermectin pour-on* is amended in paragraph (b) by adding ''058829,'' after ''051311,''.

Dated: January 6, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–1686 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–82–200309a; FRL–7443–3]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on September 7, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration and to include additional provisions.

DATES: This direct final rule is effective March 28, 2003 without further notice, unless EPA receives adverse comment by February 26, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at (404) 562–9035 (E-mail: *lesane.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The State of Florida through the FDEP submitted revisions to Rule 62–212.400 of the Florida SIP on September 7, 1999. The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration (PSD) and to include additional provisions. A detailed analysis of the revisions is presented below.

II. Analysis of Florida's Submittal

Paragraph 62–212.400(2)(a)2.a, 62–212.400(2)(a)4, and 62–212.400(2)(a)5 are being revised to include a cross-reference to Rule 62–204.800.

Paragraph 62–212.400(2)(a)2.b is being added to exempt from PSD review any collateral emissions increases resulting from pollution control projects at pulp and paper mills being undertaken to comply with the EPA ''cluster'' rule.

Paragraph 62–212.400(2)(a)2.c is being added to exempt from PSD review any collateral emissions increases resulting from pollution control projects at municipal solid waste landfills being undertaken to comply with EPA landfill gas collection rules.

Paragraph 62–212.400(2)(a)3 (the temporary clean coal technology demonstration project exemption from PSD review) is being added in accordance with 40 CFR part 52, thus correcting a discrepancy between State and Federal rules.

Paragraph 62–212.400(2)(a)4 is being revised to correct a discrepancy between State and Federal rules (changing ''unit-by-unit'' to ''pollutant-by-pollutant'').

Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with the Clean Air Act (CAA) and EPA requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 28, 2003 without further notice unless the Agency receives adverse comments by February 26, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 28, 2003 and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have 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 Clean Air Act. 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 Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2003. 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, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 8, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520(c) is amended by revising the entry for ''62–212.400'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * * *	*	*	*
	62–212 Stationary Sources Preconstruction Review			
*	* * * *	*	*	*
62–212.400	Prevention of Significant Deterioration	08/15/1999	01/27/2003 [Insert page citation of publication].	
*	* * * *	*	*	*

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[FR Doc. 03–1632 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–17, MM Docket No. 01–19: RM–10048, RM–10027; MM Docket No. 01–27, RM–10056, RM–10118]

Radio Broadcasting Services; Clayton, Ruston, Saint Joseph, and Wisner, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document consolidates two rulemaking proceedings and allots Channel 257C3 to Saint Joseph, Louisiana, and Channel 300C3 to Wisner, Louisiana, as first local services. To accommodate the Saint Joseph allotment, the document also substitutes Channel 266A for vacant Channel 257A at Clayton, Louisiana. *See* 66 FR 10267, February 14, 2001, and 66 FR 10659, February 16, 2001. This document also dismisses a counterproposal to upgrade Station KNBB(FM), Ruston, Louisiana, from Channel 257C3 to Channel 257C2, because it was not technically correct upon the date when it was filed. Rather, it was contingent on the dismissal of a counterproposal in an earlier rulemaking. The coordinates for Channel 257C3 at Saint Joseph are 32–51–44 and 91–11–41. The coordinates for Channel 266A at Clayton are 31–44–48 and 91–31–16. The coordinates for Channel 300C3 at Wisner are 32–05–28 and 91–28–57.

DATES: Effective February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket Nos. 01–19 and 01–27, adopted January 6, 2003, and released January 8, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room 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

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 257A and adding Channel 266A at Clayton, by adding Saint Joseph, Channel 257C3, and Wisner, Channel 300C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–1745 Filed 1–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.; 021016235–3005–02; I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 10

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to implement Amendment 10 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for

review and approval by the Secretary of Commerce. Amendment 10 addresses the two unrelated subjects of the transferability of limited entry permits and maximum sustainable yield (MSY) for market squid. Only the provisions regarding limited entry permits require regulatory action. The primary purpose of this final rule is to establish the procedures by which limited entry permits can be transferred to other vessels and/or individuals so that the holders of the permits have maximum flexibility in their fishing operations while the goals of the FMP are achieved.

DATES: Effective January 27, 2003, except for § 660.512(h), which is effective February 26, 2003.

ADDRESSES: Copies of Amendment 10, which includes an environmental assessment/regulatory impact review, and determination of the impact on small businesses may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council distributed a draft of Amendment 10 for public review on April 22, 2002. At its June 2002 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments. On October, 3, 2002, a notice of availability of Amendment 10 and the associated documents was published in the **Federal Register** (67 FR 62001). A proposed rule was published in the **Federal Register** on October 30, 2002 (67 FR 66103), requesting public comment. The comment period ended on December 16, 2002. Two letters were received. Amendment 10 was approved by NMFS on December 30, 2002.

Background

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan, which was renamed the Coastal Pelagic Species Fishery Management Plan, was partially approved by the Secretary of Commerce. Two of the provisions of Amendment 8 were disapproved. However, these two provisions addressed matters required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to be included in all fishery management plans. As such, the Council was required to revisit these issues in subsequent actions. First, bycatch provisions of Amendment 8 were disapproved because they did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery. Bycatch requirements of the Magnuson-Stevens Act were eventually addressed in Amendment 9, which was approved on March 22, 2001. Second, optimum yield for market squid (*Loligo opalescens*) was disapproved because Amendment 8 did not provide an estimate of MSY. The Council is addressing MSY through submission of Amendment 10.

Market Squid

Various approaches to determine an MSY proxy for market squid have been attempted. With little knowledge of the biology of squid and inadequate data available, other than landings, results from all methods used to determine an or proxy for MSY proved to be ineffective for monitoring the resource. Amendment 10, which contains a description of these methods, examines such things as historical landings, the range of the species, and the manner in which the fishery is conducted.

Additional data on squid became available from research conducted by the California Department of Fish and Game through a program implemented by State legislation establishing permit fees to fund squid research. With new information on growth, maturity, and fecundity, the Council implemented a scientific review, which resulted in the development of a proxy for MSY that came to be known as the egg escapement (EE) method. A discussion of the approach the Council used was published in the proposed rule and will not be repeated here.

The EE method is based on a modeling approach that addresses the life history of the species, with a focus on the mortality and spawning rates of sexually mature females and is based on determining a sustainable level of egg escapement. A sustainable level of egg escapement can be practically interpreted as a level of reproductive (egg) escapement that is believed to be at or near a minimum level necessary to allow the population to maintain its level of abundance into the future, that is, allow for sustainable reproduction year after year.

With the approval of Amendment 10, the FMP now uses the EE method to monitor the market squid fishery. The adoption of the EE method for this purpose does not require implementing rules because it sets a policy for monitoring the fishery and has no direct effect on the conduct of the fishery.

Capacity Goal

Amendment 10 establishes a capacity goal for the fleet and sets conditions for the transfer of permits to maintain the capacity goal. The purpose of the capacity goal is to ensure that fishing capacity in the CPS limited entry fishery is in balance with resource availability. Measuring the actual harvesting capacity of a vessel and monitoring each vessel's capacity can be complicated because the amount of fish a vessel can carry depends on many factors; therefore, Amendment 10 uses an aggregate gross tonnage (GT) of 5,650.9 mt as a proxy for fleet capacity. The aggregate gross tonnage level of 5,650.9 mt results in a fleet that is larger than necessary solely to harvest available CPS; however, the CPS finfish fleet also relies on other fishing opportunities such as fishing for squid and tuna. The current fleet of 65 vessels, which totals 5,650.9 mt GT, meets the necessity of controlling the size of the CPS fleet while taking in consideration the economic needs of the fishery. Estimated normal harvesting capacity for the current fleet, which was determined by reviewing historical average and maximum landings per trip, ranged from 60,000 mt to 111,000 mt per year. The physical harvesting capacity of the current fleet ranged from 361,000 to 539,000 mt per year. Physical capacity is a technological or engineering measure of the maximum potential output per unit of time.

Permit Transfers

As long as aggregate fleet GT is not above 5,933.5 mt (fleet GT plus 5 percent) limited entry permits can be transferred with the following restrictions: (1) Full transferability of permits only to vessels of comparable capacity (vessel GT +.10 (GT) or less), and (2) permits can be combined up to a greater level of capacity in cases where the vessel to which the permits would be transferred to is of greater harvesting capacity than the vessel from which the permit originated.

NMFS will endorse each limited entry permit based on the currently permitted vessel's calculated GT as defined by the formula in 46 CFR 69.209 for ship-shaped hulls. This formula is used by the U.S. Coast Guard (GT = 0.67 x length x breadth x depth/100). Records of length, breadth, and depth used for determining GT will be those recorded

on the vessel's Coast Guard documentation.

The original permits and their respective endorsements will remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit is transferred to a vessel with a smaller GT, the original GT endorsement will remain, and excess GT cannot be split out from the original permit configuration and sold. In cases where two or more permits are transferred to a larger vessel, the larger vessel will hold the original permits and can fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) adds up to or exceeds the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits can be sold together or separately, but the original permit endorsement cannot be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit will be allowed during each calendar year. Permits can be used only on the vessel to which they were registered. Catch history will be tied to the vessel and not to the permits.

Maintaining the Capacity Goal

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity will be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. The choice of 5 percent is a balance between allowing permit owners flexibility to improve their economic situation by modifying existing vessels or acquiring new vessels without leading to a fleet capacity that will take too long to return to the capacity goal. When the threshold of 5,933.5 mt is reached or exceeded, permits can only be transferred to vessels with equal or smaller GT, and the 10–percent vessel allowance will be removed. Restoring the 10 percent-allowance can be considered when total aggregate fleet capacity reaches the 5,650.9 mt target.

Procedures for Issuing New Limited Entry Permits

Based on changes in CPS finfish resources or market conditions, the Council may recommend to NMFS that new limited entry permits should be issued. If NMFS approves the recommendation, a notice will be published in the **Federal Register** describing the details of the recommendation. If new permits are issued, the qualifying criteria originally established in the FMP will be used for issuance. This will entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit will be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits can be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

Comments and Responses

Two letters were received. The comments therein focused primarily on the process used to issue new limited entry permits. Under Amendment 10 and the proposed rule, the Regional Administrator would use the qualifying period of January 1, 1993, through November 5, 1997, and the same qualification of landing at least 100 mt during this period as described in Amendment 8 to the FMP. If no vessel meets the landing requirement, then the permit would be issued to the vessel with landings nearest 100 mt.

Comment 1: The approach is arbitrary because (1) any gear that made the landing would be eligible, which could create a windfall for the qualifying vessel through transfer of the permit from a vessel that did not intend to fish CPS; (2) the procedure does not take into account section 301(a)(8) of the Magnuson-Stevens Act, which requires that proposed actions provide for sustained participation of fishing communities and minimize the impact on fishing communities, in this case, the fishing community of San Diego; and (3) the status of the California market squid fishery and the CPS finfish fishery, which are limited by the geographical range of the limited entry regime and recognized as closely related economically by the FMP, were not taken into account.

The commenter recommended that the inadequacies of Amendment 10 described in the previous paragraph be corrected by the following:

1. Issue permits to round-haul vessels that hold a market squid permit from the State of California. Amendment 10 recognizes the importance of squid to the CPS fishery, and some of these vessels that have participated in the CPS fishery before the qualifying period hold these permits.

2. Include as criteria for a permit, provisions of a California law that requires eligibility for fishermen that can provide evidence showing participation as a commercial fisherman for 20 years and who were participants in the CPS fishery for at least one of those years.

3. Include vessels that have a drift gill net shark and swordfish permit issued by the State of California.

4. Include vessels that have a history of participation in the tropical tuna fishery and the owner of the vessel is a member of the San Diego fishing community.

5. Include vessels that did not land 100 mt during the qualifying period.

The proposed remedy would not contribute to overcapitalilzation because fewer than 10 vessels are likely to qualify. The remedy also would minimize the impact on the fishing community in San Diego. Some vessels have squid permits but do not have CPS limited entry permits. Vessels that lost fishing access to Mexico when the Magnuson-Stevens Act extended jurisdiction to highly migratory species entered the drift gill net fishery. Recognizing the importance of having a squid permit and a CPS limited entry permit, and implementing the California criteria of historical participation makes a more reasonable accommodation to the fishing community in San Diego.

Response: The FMP does not specify the gear used for taking CPS because how the resource is harvested has never been an issue. Implementation of limited entry was expected to be beneficial to the economics of the fishery as a whole and may or may not be beneficial to any specific fisherman, because the value of permits is related to the condition of the resource and the prevailing markets for the harvest, both of which fluctuate over time. Nevertheless, limiting the number of harvesters tends to reduce individual risk. New permits would be issued only if the capacity of the fleet falls below the goal or the condition of the resource is such that new permits are warranted. Those individuals who participated in the fishery in the past but left the fishery and did not make the required landings during the window period, may qualify under the procedures of Amendment 10 if landings lower than 100 mt are considered. The Council decided to retain the current control date, window period, and level of landings required when issuing additional permits. This approach was adopted to be less disruptive in terms of displacing vessels from the fishery and reduces impacts on existing fishing patterns, and, therefore, on fishing communities.

Through Amendment 8 NMFS closely examined the relationship between vessels harvesting CPS finfish and those

harvesting squid with respect to economic dependence. NMFS found that almost all of the originally permitted vessels also had squid permits from the State of California. Thus, NMFS chose not to issue permits to all holders of squid permits because the fleet would have been too large.

Implementation of Amendment 10 will allow permits to be transferable to another individual or to another vessel. Permits will have a cost, but the cost of a permit is expected to reflect the value of the permit. Therefore, those individuals needing to improve their business opportunities through the purchase of a permit will be able to assess the value of making the purchase by considering future potential harvests and the prevailing market for permits.

Comment 2: Amendment 10 does not present information as required under section 303(a)(4)(C) of the Magnuson-Stevens Act to provide data on the extent to which U.S. processors, on an annual basis, will process CPS landed by the CPS fleet.

Response: Harvesting capacity not processing capacity as it relates to overcapitalization is the subject of Amendment 10. Nevertheless, the FMP assumed that landings and processing capacity would increase as the biomass increased. Processing capacity has increased, and it continues to increase.

Comment 3: Amendment 10 does not discuss an option based on grandfathered permits as provided in California law.

Response: California law requires that any California fisherman with 20 years of participating in any fishery and 1 year in the fishery slated for limited entry be given a preference. While experience was considered in Amendment 10, only participation in the CPS fishery was considered in an effort to determine those individuals that depend on CPS and to prevent overcapitalization.

Comment 4: The provision to issue new permits is not fair and equitable. Amendment 10 requires new permits to be issued from the original list of vessels. The list of potentially qualifying vessels was developed under Amendment 8, before a fishery began off Oregon and Washington, which is a bias toward California fishermen. If fisheries off Oregon and Washington had existed when Amendment 8 was implemented, many Oregon and Washington fishermen would have received a permit.

Response: The decision was made by the Council to rely on the existing window period and required landings, which continues the Council's preference for historical participation. Before the FMP was implemented, some fishermen from other states entered the squid fishery, landed CPS, and qualified for a limited entry permit, an option open to anyone, regardless of state residency. New entrants in the fishery who have benefitted from participating in the open access fishery may also enter the limited entry fishery by purchasing a permit under the rules established by Amendment 10.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP Amendment 10 is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because the rule relieves a restriction on the sale to other individuals and/or transfer to other vessels of limited entry permits, it is not necessary to delay the effective date of this final rule for 30 days under 5 U.S.C. 553(d)(1), except for § 660.512(h). This rule will give individuals flexibility in managing their business affairs by allowing them to invest in the fishery through the purchase of a permit or to sell a permit on the open market.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. However, several comments addressed the economic impact of the rule. Responses to these comments are presented above. None of these comments resulted in a change to the determination that the rule would not have a significant economic impact. As a result, a regulatory flexibility analysis was not prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0204. Public reporting burden for an application for transfer of a limited entry permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (See ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

There have been no changes to the regulatory text in the proposed rule.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.502, definitions for ''comparable capacity'', and ''gross tonnage'' are added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Comparable capacity means gross tonnage plus 10 percent of the vessel's calculated gross tonnage.

* * * * *

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing (.67 x length x breadth x depth/100). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or State.

* * * * *

3. In § 660.512, a new paragraph (h) is added to read as follows:

§ 660.512 Limited entry fishery.

* * * * *

(h) *Issuance of new permits.* (1) When the aggregate gross tonnage of all vessels participating in the limited entry fishery

declines below 5,650.9 metric tons (mt), the Council will review the status of the fishery, taking into consideration:

(i) The changes in gross tonnage that have and are likely to occur in the transfer of limited entry permits;

(ii) The actual harvesting capacity as experienced in the current fishery in comparison to the capacity goal;

(iii) Comments of the CPSMT;

(iv) Any other relevant factors related to maintaining the capacity goal.

(2) Following its review, the Council will recommend to NMFS whether additional permit(s) should be issued and if the new permit(s) should be temporary or permanent. The issuance of new permit(s) shall be based on the following:

(i) The qualifying criteria in paragraph (b) of this section, but vessels that were issued a permit before December 31, 2000, are not eligible.

(ii) If no vessel meets the qualifying criteria in paragraph (b), then the permit(s) will be issued to the vessel(s) with total landings nearest 100 mt during the qualifying period of paragraph (b).

(iii) No vessel will be issued a permit under this paragraph (h) that is currently registered for use with a permit.

(3) The Regional Administrator will review the Council's recommendation and determine whether issuing additional permit(s) is consistent with the FMP and with paragraph (h)(2) of this section. If issuing additional permit(s) is appropriate, the Regional Administrator will:

(i) Issue the appropriate number of permits consistent with the Council's recommendation; and

(ii) Publish a document in the **Federal Register** notifying the public that new permits or a new permit has been issued, the conditions attached to any permit, and the reasons for the action.

4. Section 660.514 is revised to read as follows:

§ 660.514 Transferability.

(a) *General.* (1) The SFD will process applications for transferring limited entry permits to a different owner and/or to a different vessel according to this section.

(2) After January 27, 2003, the SFD will issue a limited entry permit to the owner of each vessel permitted to participate in the limited entry fishery for CPS. This permit will replace the existing permit and will include the gross tonnage of the vessel, which will constitute an endorsement for that vessel for the purpose of regulating the transfer of limited entry permits.

(b) *Criteria.* (1) When the aggregate gross tonnage of all vessels participating the limited entry fishery is at or below 5,650.9 mt, a permit may be transferred to a different owner or to a different vessel in the following circumstances only:

(i) A permit may be transferred to a vessel without a permit if the vessel without a permit has a comparable capacity to the capacity on the permit or is less than comparable capacity on the permit.

(ii) When a permit is transferred to a vessel without a permit that has less gross tonnage than that of the permitted vessel, the excess gross tonnage may not be separated from the permit and applied to a second vessel.

(iii) A permit may be transferred to a vessel without a permit that is of greater than comparable capacity only if two or more permits are transferred to the vessel without a permit to equal the gross tonnage of the vessel. The number of permits required will be determined by adding together the comparable capacity of all permits being transferred. Any gross tonnage in excess of that needed for a vessel remains with the permit.

(2) When a vessel with multiple permits leaves the fishery, the permits may be sold separately and applied to other vessels according to the criteria in this section.

(c) *Stipulations.* (1) The gross tonnage endorsement of a permit is integral to the permit for the duration of the permit, regardless of the gross tonnage of any vessel to which the permit is transferred.

(2) Permits may be used only on the vessel for which they are registered by the SFD. All permits that authorize a vessel to operate in the limited entry fishery must be on board the vessel during any fishing trip on which CPS is harvested or is on board.

(3) A permit may be transferred only once during a calendar year.

(d) *Vessel alterations.* (1) A permitted vessel's length, breadth, or depth may be altered to increase the gross tonnage of the vessel only if the aggregate gross tonnage of all vessels participating in the limited entry fishery equals, or is below 5,650.9 mt, and only under the following conditions:

(i) The gross tonnage of the altered vessel, calculated according to the formula in 46 CFR 69.209(a), does not exceed 110 percent of the vessel's original gross tonnage endorsement, and

(ii) A new certificate of documentation is obtained from the U.S. Coast Guard or State. Modifications exceeding 110 percent of the vessel's gross tonnage endorsement will require registration of the vessel under an additional permit or permits or under a permit with a sufficient gross tonnage endorsement.

(2) A copy of the certificate of documentation indicating changes in length, depth, or breadth must be provided to the SFD.

(3) The revised gross tonnage will not be valid as an endorsement until a revised permit is issued by the SFD.

(e) *Applications.* (1) All requests for the transfer of a limited entry permit will be made to the SFD in writing and shall contain the following information:

(i) Name, address, and phone number of the owner of the permitted vessel.

(ii) Name of the permitted vessel and documentation number of the vessel.

(iii) Name, address, and phone number of the owner of the vessel to which the permit is to be transferred.

(iv) Name and documentation number of the vessel to which the permit is to be transferred.

(v) Signature(s) of the owner(s) of the vessels participating in the transfer.

(vi) Any other information that the SFD may request.

(2) No permit transfer is effective until the transfer has been authorized by the SFD.

(f) *Capacity reduction.* (1) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, a permit may be transferred to a vessel without a permit only if the vessel without a permit is of the same or less gross tonnage.

(2) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, alterations in the length, depth, or breadth of a permitted vessel may not result in an increase in the gross tonnage of the vessel.

[FR Doc. 03–1784 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 012103F]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye and Northern Rockfish in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Community Development Quota (CDQ) reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.The 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI are 2 metric tons (mt) and .25 mt, respectively, as established by the Interim 2003 Harvest Specifications of Groundfish in the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. Consequently, the Regional Administrator is establishing directed fishing allowances of zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim CDQ reserve amounts, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 21, 2003.

Richard W. Surdi

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

[FR Doc. 03–1780 Filed 1–22–03; 4:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011503C]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole Sideboard Limit in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for rock sole by catcher processors that are listed under the American Fisheries Act (AFA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time, January 29, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and part 679.

The interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors in the BSAI is 359 metric tons (mt) as established by the interim 2003 harvest specifications for groundfish in the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.20(d)(1)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of zero mt, and is setting aside the 359 mt of the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors as bycatch to support other anticipated groundfish fisheries. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for rock sole by listed AFA catcher processors in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim sideboard limit for listed AFA catcher processors, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for

waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 21, 2003.

Richard W. Surdi,

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

[FR Doc. 03–1785 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 17
Monday, January 27, 2003

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

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–2]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the collection of blood and tissue samples at slaughtering establishments. In that document, we proposed, among other things, to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before March 28, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–017–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 99–017–1'' on the subject line.

You may read any comments that we receive on Docket No. 99–017–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4363.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, we published in the **Federal Register** (67 FR 70864–70875, Docket No. 99–017–1) a proposal to amend the regulations in 9 CFR part 71 to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. We also proposed to require that livestock or poultry moved interstate for slaughter be moved only to a slaughtering establishment that has been listed by the Administrator and provided proposed criteria for the listing of establishments.

Comments on the proposed rule were required to be received on or before January 27, 2003. We are extending the comment period on Docket No. 99–017–1 for an additional 60 days, ending March 28, 2003. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8304–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1752 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–44–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This proposed AD would require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage hereon); and would require you to replace any damaged torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design torque tube or torque tube assembly is installed. This proposed AD is the result of several reports of damage found in the flap control torque tube on the affected airplanes. The actions specified by this proposed AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any

comments on this proposed rule on or before March 21, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2002–CE–44–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment On This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–44–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

A review of FAA's service difficulty report (SDR) database shows several incidents of cracks and corrosion in the flap control torque tube on Piper PA–23 series airplanes. One incident of a broken flap control torque tube resulted in a split flap condition during approach.

What Are the Consequences If the Condition Is Not Corrected?

Cracked or corroded flap torque tubes, if not detected and corrected, could result in damage to the flap control torque tube and failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Piper has issued Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and

—Installing a part number (P/N 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes of the same type design that do not incorporate a certain flap control torque tube or torque tube assembly;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and would require you to replace any damaged flap control torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design flap control torque tube or flap control torque tube assembly is installed.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 3,733 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	None for inspection	$480	$1,791,840

We estimate the following costs to accomplish any necessary replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$452 per airplane	$692

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The New Piper Aircraft, Inc.: Docket No. 2002–CE–44–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a part number (P/N) 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly:

Model	Serial Nos.
PA–23 and PA–23–160.	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–504 and 27–2000 through 27–8154030.
PA–E23–250	27–2505 through 27–4916 and 27–7304917 through 27–7554168.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage hereon).	Initially inspect upon accumulating 2,500 hours time-in-service (TIS) on the flap control torque tube or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS until one of the parts specified in paragraph (d) of this AD is installed.	In accordance with secitons 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(2) Replace any damage flap control torque tube and replace any wooden end plugs with new plastic end plugs, P/N 17631–002. Replace the flap control torque tubes with either a P/N 17634–002 flap control torque tube or a P/N 104622–002 or 104622–004 flap control torque tube assembly. (i) The P/N 17631–002 end plugs are part of the P/N 104622–002 and 104622–004 flap control torque tube assemblies, but must be obtained for the P/N 17634–002 installation. (ii) You do not have to inspect the existing wooden end plugs as specified in the service bulletin since this AD requires the installation of plastic and plugs.	Prior to further flight after the inspection where damage is found.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(3) The repetitive inspections required by this AD may be terminated after installation of a replacement flap control torque tube or flap control torque tube assembly as specified in paragraph (d) of this AD.	You may replace the flap control torque tube assembly at any time, but must replace prior to further flight if damage is found during an inspection.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

Actions	Compliance	Procedures
(4) Only install, on any affected airplane, a flap control torque tube or flap control torque tube assembly and end plugs that incorporate the part numbers specified in paragraph (d) of this AD.	As of the effective date of this AD	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

(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) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, , Aircraft Certification Service.

[FR Doc. 03–1679 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 94–20–04 R1, which currently requires ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This proposed AD is the result of the need to add a repetitive inspection of the fuselage bulkheads and change other inspections from a repetitive to a one-time action. The proposed AD would make these changes to AD 94–20–04 R1. The actions specified by the proposed AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 93–CE–37–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

On October 15, 2002, FAA issued AD 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), to require ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes.

The intent of this AD was to maintain the inspection and modification requirements of AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), but condense and clarify the information presented in AD 94–20–04.

What Has Happened Since AD 94–20–04 R1 To Initiate This Action?

Comments from the public since issuance of AD 94–20–04 R1 indicate a need for a revision to that AD. Specifically, the visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging should all be a one time action. Currently, they are to be accomplished repetitively at 100-hour time-in-service (TIS) intervals.

In addition, we inadvertently did not include the 100-hour TIS interval repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

The FAA's Determination and Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document still exists or could develop on other Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B of the same type design;

—The actions of AD 94–20–04 R1 should be maintained except for adding the fuselage bulkhead inspections and making certain repetitive actions a one-time action; and

—AD action should be taken in order to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

What Would the Proposed AD Require?

This proposed AD would revise AD 94–20–04 R1, which applies to Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B. The proposed AD would:

—Maintain the actions of AD 94–20–04 R1, but would make the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and

—Would add repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects 10,200 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed initial inspections. These cost figures are exactly the same as what is currently required by AD 94–20–04 R1. Although we are adding the inspection of the fuselage bulkheads to the proposed AD, we had already incorporated the costs of this inspection into the Cost Impact of AD 94–20–04 R1. Therefore, this proposed AD presents no new costs upon the public:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours at $60 per hour = $2,400	Not applicable	$2,400	$24,480,000

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that would be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes would incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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 removing Airworthiness Directive (AD) 94–20–04

R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15): Docket No. 93–CE–37–AD; Revises AD 94–20–04 R1, Amendment 39–12919, which revised AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

Note 1: Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04. We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action. Part of this other AD action is the incorporation of Raytheon Service Raytheon Service Bulletin 27–3358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a), (a)(1), and (a)(2) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Verify that the ruddervator balance is within manufacturer's specified limits as defined in the applicable shop or maintenance manual. If the ruddervator is outside the specified limits, balance the ruddervator control surfaces.	Accomplish the verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04) and thereafter prior to further flight after the ruddervators are repaired or repainted (even if stripes are added or paint is touched up). Accomplish the balancing prior to further flight after the ruddervator is found outside the specified limits.	Verify in accordance with the applicable the shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions.
(2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage. (i) Repair or replace any damaged parts; and (ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect and set the controls, tension, and rigging within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04). Accomplish any repairs and replacements prioir to further flight after the inspection.	In accordance with the procedures and as specified in the instructions to Beech Kit 35–4017–1 ''Kit Information Empennage and Aft Fuselage Inspection'', as specified in Beech Service Bulletin No. 2188, dated May, 1987.
(3) Accomplish the following actions: (i) Visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.); (ii) Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks); and (iii) Repair or replace any damaged parts.	Initially inspect within the 100 hours time-in-procedures after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Repair or replace prior to further flight where damage is found.	In accordance with the procedures in the instructions to Beech Kit 35–4017–1 ''Kit Information Empennage & Aft Fuselage Inspection'', as specified in Beech SB 2188, dated May 1987.
(4) Remove all external stabilizer reinforcements installed during incorporation of either Supplement Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable. (i) Seal or fill any residual holes with appropriate size rivets. (ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained. (iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(5)(i) of this AD. (iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(5)(i) of this AD.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the applicable maintenance information.
(5) Accomplish the following: (i) Install stablizer reinforcements; (ii) Set the elevator nosedown trim; and (iii) Replace the ruddervator tab control cables with larger diameter cables.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with RAC Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987.

Actions	Compliance	Procedures
(6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date the of AD 94–20–04), unless already accomplished. Correct any discrepancies. prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04 R1 or AD 94–20–04 are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a), (a)(1), and (a)(2) 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 Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04 R1, Amendment 39–12919.

Appendix to Docket No. 93–CE–37–AD

Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1678 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposed AD would require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. This proposed AD would also require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 28, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–56–AD, 901 Locust, Room

506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2002–CE–56–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

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:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–56–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that the steering jack piston rod failed on one of the affected airplanes while in service. The CAA determined that the failure of the piston rod was caused by fatigue cracking on the piston rod end fitting. Fatigue cracking was caused by applying excessive torque to the steering jack piston rod end fitting during assembly.

The safe life limit for the steering jack piston rod is currently 45,000 ground-air-ground (GAG) cycles. Failure of the above-mentioned steering jack piston rod occurred at 2,132 GAG cycles. Because of the possibility that excessive torque had been applied to the steering jack piston rod during assembly, the safe life limit for this part has been reduced.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

Is There Service Information That Applies to This Subject?

British Aerospace has issued Jetstream Mandatory Service Bulletin 32–JA020741, Original issue: November 2, 2002.

What Are the Provisions of This Service Information? This Service Bulletin Specifies:

—Inspecting the steering jack piston rod for cracks and replacing if necessary;
—Measuring the torque setting of the steering jack piston rod end fitting and stop bolt;
—Measuring the thickness of the tab washers; and
—Calculating a new safe life limit for the piston rod.

This service bulletin also references APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), which includes procedures for accomplishing the actions specified in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original issue: November 2, 2002.

What Action Did the CAA Take?

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom 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 CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and

stop bolt; and measure the thickness of the tab washers. This proposed AD would also require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements,

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 250 = $15,000

We estimate the following costs to accomplish any necessary replacements of the steering jack piston rod that would be required based on the results of the proposed inspection and/or measurements. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
8 workhours X $60 = $240	$5,300	$240 + $5,300 = $5,540

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 90 days or 200 ground-air-ground (GAG) cycles after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time Presented in Calendar Time and Operational Time?

Failure of the steering jack piston rod is only unsafe during airplane operation; this condition is not a result of the number of times the airplane is operated. The cause of the unsafe condition is the result of incorrect torque settings used on the steering jack piston rod end fitting during assembly. We have no way of determining when the unsafe condition occurred on the affected airplanes. For this reason, the FAA has determined that a compliance based on calendar time and operational time should be utilized in this proposed AD in order to assure that the unsafe condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket No. 2002–CE–56–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, 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 detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

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

Actions	Compliance	Procedures
(1) Insepct the steering jack piston rod for cracks. (i) If cracks are found, replace the cracked steering jack piston rod. Install the new steering jack piston rod using a torque setting of 175 lbf (pound force) inch or 20 Nm (Newton meters) when tightening the end fitting and stop bolt. (ii) If no cracks are found, determine the torque setting of the steering jack piston rod end fitting and stop bolt.	Inspect within the next 90 days or 200 ground-air-ground (GAG) cycles after the effective date of this AD, whichever occurs first. Replace cracked steering jack piston rods or determine torque settings prior to further flight.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in Britich Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(2) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 175 lbf inch or 20 Nm and is equal to or les than 435 lbf inch or 49 Nm: (i) Calculate the new safe life limit for the steering jack piston rod; and (ii) Incorporate the following into the Aircraft Logbook: ''In accordance with AD**—**—**, the steering jack piston rod is life limited to_____.''	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(3) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 435 lbf inch or 49 Nm, measure the deformation thickness of the tab washers . (i) If the tab washer deformation thickness is greater than 0.001 inch and is equal to or less than 0.005 inch, calculate a new safe life limit for the steering jack piston rod, and incorporate the following into the Aircraft Logbook: ''In accordance with AD **—**—**—**—, the steering jack piston rod is life limited to _____.'' (ii) If the tab washer deformation thickness is greater than 0.005 inch, replace the steering jack piston rod using the torque settings specified in paragraph (d)(1) of this AD.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(4) Do not install any steering jack piston rod unless it has been inspected, determined to be free of cracks, and the safe life limit has been established.	As of the effective date of this AD	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.

Note 1: If the owners/operators of the affected airplanes have not kept track of ground-air-ground (GAG) cycles, hours time-in-service (TIS) may be substituted by calculating 1.5 GAG cycles per hour TIS. For example, 3,000 GAG cycles would equal 2,000 hours TIS.

(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 Standards Office Manager, 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 Standards Office Manager.

Note 2: 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) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1677 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. This proposal would require initial and repetitive visual inspections of the intermediate pressure (IP) compressor rear stubshaft and IP turbine shaft for load-bearing spline flank wear, and replacement of these shafts if necessary. This proposal is prompted by reports of IP compressor rear stubshaft and IP turbine shaft load-bearing spline flank wear, revealed at inspection during overhaul. The actions specified by the proposed AD are intended to prevent the loss of drive between the IP turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by March 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7176, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–19–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), notified the FAA that an unsafe condition may exist on RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. The CAA advises that twelve reports have been received of overhaul inspections revealing unacceptable levels of flank wear on IP compressor rear stubshaft splines and IP turbine shaft splines. This unacceptable wear is attributed to the current design air/oil mist lubrication method used for the splines. Excessive wear can lead to loss of spline drive between the IP compressor and the IP turbine shaft, resulting in IP turbine rotor overspeed and possible uncontained engine failure.

Pending Optional Terminating Action

RR has informed the FAA that they are planning an optional terminating action for the repetitive inspections specified in paragraph (a) of this proposal. This optional terminating action will incorporate improved modules with new identities. RR is planning to introduce information in the first quarter of 2003 on modifying affected modules to new module identities in RR Major Modification Bulletin No. 72-D495.

Bilateral Agreement Information

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines of the same type design, the proposed AD would require initial and repetitive visual inspections of the IP compressor rear stubshaft and IP turbine shaft for load-bearing spline flank wear, and replacement of these shafts if necessary.

Economic Analysis

There are approximately 350 engines of the affected design in the worldwide fleet. The FAA estimates that 102 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.5 work hour per engine to accomplish the proposed inspection for parts determined not worn, and an additional 1.5 work hours per engine for parts determined worn that would require further inspection. The average labor rate is $60 per work hour. Based on

these figures, the total cost of the proposed AD to U.S. operators is estimated to be $12,240.00.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2002–NE–19–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. These engines are installed on, but not limited to Boeing 777 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 (b) 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 the loss of drive between the intermediate pressure (IP) turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane, do the following:

(a) At or before the accumulation of 4,500 cycles-in-service after the effective date of this AD, remove the 05 module (consisting of the IP turbine and low pressure turbine) and do the following:

(1) Visually inspect the load-bearing splines of the IP turbine shaft for flank wear.

(2) If flank wear is 0.001 inch or less, return the 05 module to service and repetitively inspect the splines within 4,500 cycles-since-last-inspection, as specified in paragraph (a) of this AD.

(3) If flank wear is between 0.001 inch and 0.005 inch, also visually inspect the load-bearing splines of the IP compressor rear stubshaft for flank wear.

(4) Replace any shaft with load-bearing spline wear over 0.005 inch.

(5) If flank wear on load-bearing splines is between 0.001 inch and 0.005 inch, return the 05 module to service and repetitively inspect the splines within 2,000 cycles-since-last-inspection, as specified in paragraph (a) of this AD. Information on inspection of these splines can be found in Rolls-Royce Mandatory Service Bulletin RB.211–72–D339, dated September 14, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA airworthiness directive 003–09–2001, dated September 14, 2001.

Issued in Burlington, Massachusetts, on January 16, 2003.

Francis A. Favara,

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

[FR Doc. 03–1676 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13514; Airspace Docket No. 02–AWA–4]

RIN 2120–AA66

Proposed Establishment of Class C Airspace and Revocation of Class D Airspace, Fayetteville (Springdale), Northwest Arkansas Regional Airport; AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish a Class C airspace area and revoke the existing Class D airspace area at the Northwest Arkansas Regional Airport (XNA), Fayetteville (Springdale), AR. The FAA is proposing this action due to the increase in aircraft operations at XNA and the potential for a midair collision between aircraft arriving and departing XNA and other aircraft operating close to the existing Class D airspace area. The establishment of this Class C airspace area would require pilots to establish and maintain two-way radio communications with air traffic control (ATC) and operate with an altitude encoding transponder while in and above the Class C airspace area. The FAA is taking this action to promote the efficient use of airspace, and reduce the risk of midair collision in the northwest Arkansas terminal area.

DATES: Comments must be received on or before March 13, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20591–0001. You must identify the docket numbers FAA–2002–13514/Airspace Docket No. 02–AWA–4, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number: 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

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:

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 both docket numbers 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 Docket No. FAA–2002–13514/Airspace Docket No. 02–AWA–4.'' 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 Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In November of 1998, XNA commenced operation. The airport is a public-use facility that is serviced by a radar approach control located at Fort Smith, AR, and a non-Federal airport traffic control tower. XNA currently has a Class D airspace area. The number of enplanements for XNA has increased and now exceeds the FAA criteria for Class C airspace area candidacy. A study of aircraft operations in the area has revealed that the proximity of XNA to seven other airports within a 20-nautical-mile radius and the current flight paths of aircraft operating in the Northwest Arkansas terminal area has increased the potential for a midair collision. With the current Class D airspace area, aircraft operating in the Northwest Arkansas terminal area may fly as close as 4.4 nautical miles from XNA without communicating with ATC. Additionally, these aircraft are frequently operating at altitudes that may conflict with aircraft arriving or departing XNA. Establishment of a Class C airspace area would reduce the potential for midair collisions and increase the level of safety in the Northwest Arkansas terminal area by requiring aircraft to establish and maintain 2-way radio communication with ATC when operating in the proposed Class C airspace area, and to operate with an altitude encoding transponder when in and above the proposed area.

Public Input

In January, 2001, the FAA held three informal airspace meetings in the Northwest Arkansas area to solicit public input regarding the planned establishment of a Class C airspace area. Additionally, an *ad hoc* committee was formed and met during May and June, 2001. The information received during the informal airspace meetings and the recommendations made by the ad hoc committee were considered and formed the basis for designing the proposed Class C airspace area.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class C airspace area and revoke the existing Class D airspace area at XNA. The FAA is proposing this action due to an increase in aircraft operations in the Northwest Arkansas terminal area. The establishment of this proposed Class C airspace area would require pilots to maintain two-way radio communications with ATC when operating in a Class C airspace area and to operate with an altitude encoding transponder while in or above the Class C airspace. Implementation of the proposed Class C airspace area would promote the safe and efficient use of airspace, and reduce the risk of midair collision in the Northwest Arkansas terminal area.

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. Therefore, this proposed 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) 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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is not ''a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This proposed rule would not have a significant impact on a substantial number of small entities, would not constitute a barrier to international trade, and does not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

The proposed rule would revoke the Class D airspace area currently surrounding the Northwest Arkansas Regional Airport and establish a Class C airspace area there. The FAA would incur costs of approximately $500 in order to send a ''Letter To Airmen'' to pilots within a 50-mile radius of the Northwest Arkansas Regional Airport informing them of the airspace change. The FAA would not incur any other costs for air traffic control staffing, training, or equipment. Changes to sectional charts would occur during the chart cycle and would cause no additional costs beyond the normal update of the charts. Any public meeting and safety seminar would not result in costs to the aviation community because they would occur regardless of this final rule. Aircraft owners and operators would incur minimal equipment costs to operate in the Class C airspace area. Most of the air traffic comes from a mix of air taxi and commuter aircraft. These aircraft should already have the necessary equipment to transition Class C airspace area.

The FAA contends that establishing the Class C airspace area surrounding the Northwest Arkansas Regional Airport would increase the level of safety for the operations that occur at the airport. Therefore, the FAA has determined that the proposed rule would be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All commercial and most general aviation (GA) operators who presently use the Northwest Arkansas Airport should be currently equipped to use the Class C airspace area. Though it is currently surrounded by Class D airspace, most of its air traffic comes from air taxi and commuter aircraft. These aircraft already have the necessary equipment to transition Class C airspace area. Those GA operators who currently transit the Northwest Arkansas terminal area without Mode C transponders can circumnavigate the Northwest Arkansas Class C airspace area at negligible cost, without significantly deviating from their regular flight paths. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration has determined that this propose rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the general aviation community and other interested parties. All commenters are asked to provide documented information in support of their comments.

International Trade Impact Analysis

This proposed rule is a domestic airspace rulemaking and would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A

''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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 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 FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASW AR C Northwest Arkansas Regional Airport, AR [New]

Northwest Arkansas Regional Airport, AR
(Lat. 36°16′55″ N., long. 94°18′25″ W.)

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Northwest Arkansas Regional Airport, excluding that airspace from lat. 36°21′06″ N., long. 94°15′03″ W.; to lat. 36°15′30″ N., long. 94°12′28″ W.; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport excluding that airspace from lat. 36°26′53″ N., long. 94°17′42″ W.; to lat. 36°09′43″ N., long. 94°09′49″ W.; and that airspace extending upward from 2,900 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport from lat. 36°26′53″ N., long. 94°17′42″ W.; thence clockwise on the 10-mile radius of the airport to lat. 36°09′43″ N., long. 94°09′49″ W. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000—Subpart D-Class D Airspace

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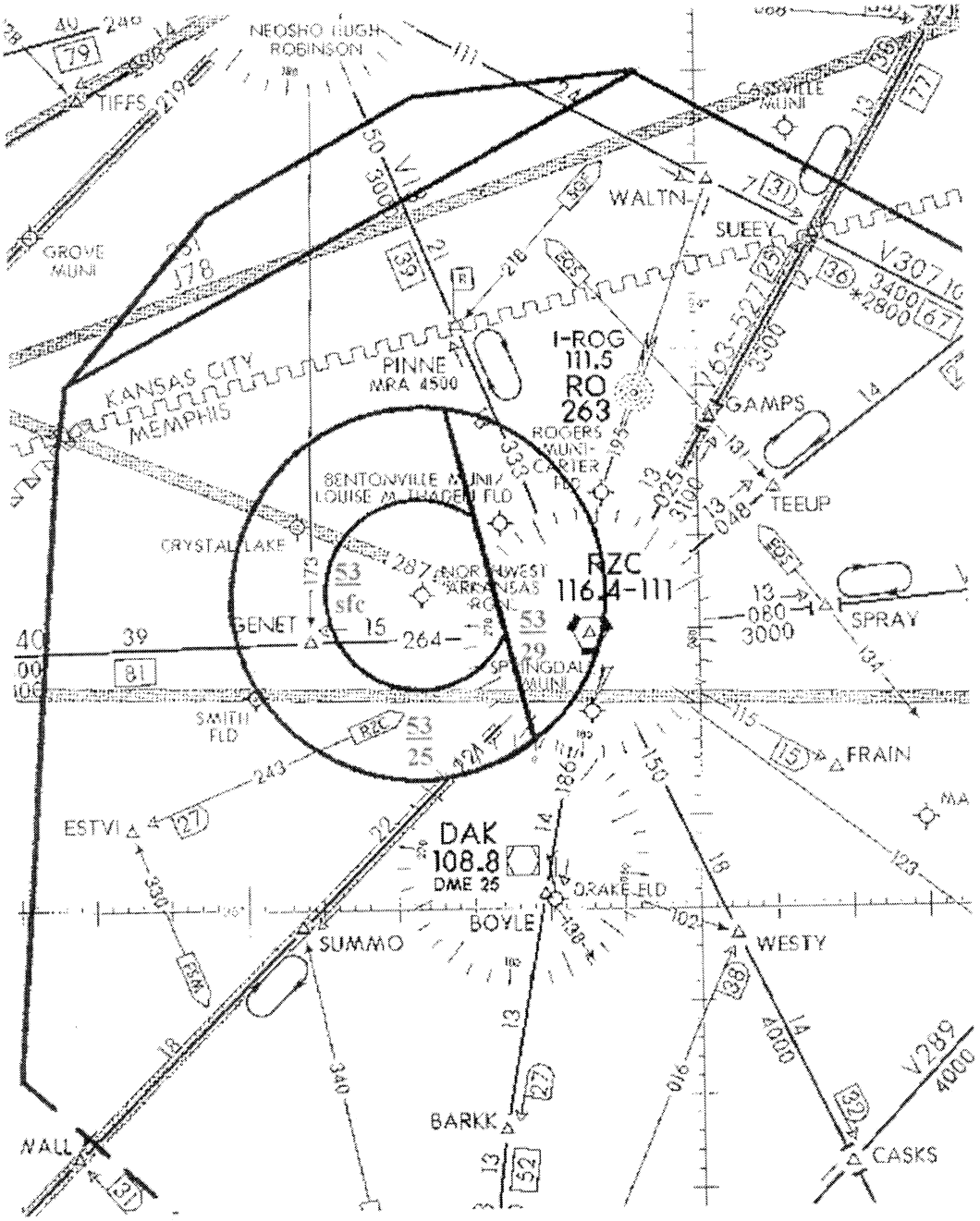
ASW AR D Fayettville (Springdale), Northwest Arkansas Regional Airport, AR [Removed]

* * * * *

Issued in Washington, DC, on January 13, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.



[FR Doc. 03–1313 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. PL03–1–000]

Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid

January 15, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed policy statement

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization (RTO), form independent transmission companies (ITCs) within RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid. The proposed policy would create rate incentives that reward RTO and ITC formation and grid investment, because independent regional grid operation and coordination will improve grid performance, reduce wholesale transmission and transactions costs, improve electric reliability, and make electric wholesale competition more effective in ways that benefit all customers. We invite comments on the proposed policy statement.

DATES: Comments are due March 13, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Stephen Pointer (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8761.

Andre Goodson (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8560.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission proposes a new policy for the rates of transmission owners operating within a Regional Transmission Organization (RTO). Because they are independent of market participants, RTOs and Independent Transmission Companies (ITCs) make competitive wholesale electric markets more efficient, fair, trustworthy, and cost-effective. This new policy will reward transmission owners for joining RTOs and turning their assets over for RTO operation. It will reward transmission owners for forming ITCs or taking other measures which make their transmission facilities operationally independent from the activities of other market participants. It will reward transmission owners for pursuing additional measures to operate and expand the transmission grid efficiently in ways that solve RTO-identified system needs using either classic transmission investments or innovative technologies. However, only transmission owners which participate in RTOs will be able to take advantage of these incentives. This policy will promote competitive wholesale electric markets, reduce wholesale electric costs and improve electric reliability.

II. Summary of Proposed Incentives

2. Under this proposed policy: (1) Any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its return on equity (ROE) for all such facilities transferred; (2) ITCs that participate in RTOs and meet the independent ownership requirement (discussed below) would qualify for an additional incentive equivalent to 150 basis points applied to the book value of facilities at the time of the divestiture; and (3) we also propose a generic ROE-based incentive equal to 100 basis points for investment in new transmission facilities which are found appropriate pursuant to an RTO planning process.

III. Background

A. Order No. 2000

3. We adopted Order No. 2000[1] to encourage voluntary and timely formation of RTOs. Order No. 2000 found that transmission facilities can be operated more reliably and efficiently when coordinated over large geographic areas, and that RTOs would achieve this result by establishing: regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of available transmission capacity (ATC); more effective management of parallel path flows; more efficient planning for transmission and generation investment; and improved grid reliability. It concluded that RTOs would help eliminate the opportunity for unduly discriminatory practices by transmission providers, reduce the need for overly intrusive regulatory oversight, and instill trust among competitors that all are playing by the same rules.

4. Order No. 2000 recognized that realization of ''effective and efficient RTOs is dependent in large measure on the feasibility and vitality of the stand-alone transmission business.''[2] It also found that transmission pricing reforms may be needed to facilitate both RTO formation and the formation of stand-alone transmission businesses such as ITCs. The order discussed various innovative rate options and identified specific innovative rate mechanisms that we would consider for entities that meet the minimum characteristics of RTOs.[3] In identifying the specific innovative rate mechanisms (including performance-based rates) that we would consider for entities that meet the minimum characteristics of RTOs, Order No. 2000 neither prescribed a specific transmission pricing method nor guaranteed approval of any particular innovative pricing proposal. All innovative pricing proposals should be fully justified:

> The [a]pplicant [for innovative rate treatments] must explain how the proposed rate treatment would help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; provide a cost-benefit analysis, including rate impacts; and explain why the proposed rate treatment is appropriate for the RTO proposed by the Applicant. This means that filings under section 35.34(e) must be complete and fully explained; must demonstrate that the resulting rates are just, reasonable, and not unduly discriminatory or preferential; must identify how the rate treatment promotes efficiency and what benefits result; and must demonstrate that the rate treatment does not impede the RTO from meeting the minimum characteristics and functions required under Order No. 2000.[4]

B. Experience since Order No. 2000

5. Order No. 2000 called for RTOs to be in operation across the nation by December 2001. While the industry is making significant progress in the development of RTOs and we have preliminarily approved seven RTO proposals, only two of those have become fully approved RTOs—Midwest

[1] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), *aff'd sub nom.* Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[2] Order No. 2000 at 31,170.

[3] *See* § 35.34(e) of our regulations, 18 CFR 35.34(e) (2002) (innovative rate treatments for RTOs).

[4] *Id.* at 31,171.

Independent Transmission System Operator, Inc. (Midwest ISO), which began operating in early 2002, and PJM Interconnection, L.L.C. (PJM).[5] Moreover, while we have found that ITCs would be instrumental in achieving the goals of Order No. 2000, only one ITC—Michigan Electric Transmission Company, LLC (Michigan Transco)—is currently operating.

1. Innovative Rates for Independence

6. To date we have approved incentive rates for RTO participation and additional levels of independence on a case-by-case basis. In *International Transmission Company,*[6] we conditionally approved a transmission rate moratorium based on the transmission component of bundled retail rates, and recovery of an amount necessary to hold the seller harmless from the income tax consequences of the divestiture of transmission assets, subject to the company becoming a fully independent transmission company (with no active or passive ownership by market participants) and fully participating in a Commission-approved RTO by a date certain.[7] We stated:

> We are cognizant of the risks [International Transmission Company] has assumed under this proposal and believe that its willingness to bear the financial risks of failing to meet the conditions [of Commission approval] is an example of the different approach to the transmission business that we can expect from a stand-alone transmission company. We also believe that accelerated development of independent stand-alone transmission businesses will lead to an accelerated transition to competitive, regional bulk power markets and is in the best interest of consumers.[8]

7. In *Trans-Elect, Inc., et al.*,[9] a newly formed ITC, we conditionally approved a rate moratorium based on the transmission component of bundled retail rates, effective upon the transfer of operational control of transmission facilities to an approved RTO.[10] Further, we approved rate recovery of an amount equal to the value of deferred taxes on the seller's books at the time of the sale associated with the difference between tax and book basis of transmission plant, with cost recovery over twenty years beginning January 1, 2006, as long as Michigan Transco joins and remains in a Commission-approved RTO.

8. In *Midwest Independent Transmission System Operator, Inc.,*[11] we permitted an upward adjustment of 50 basis points to the proxy group's ROE midpoint for use by all participating transmission owning utilities, and left open the possibility of additional upward adjustments, based on the Midwest ISO's level of operational independence:

> There are, however, policy reasons to make upward adjustments—particularly with regard to the level of operational independence that the Midwest ISO provides. In this case, we will make an upward adjustment of 50 basis points from the proxy group midpoint for the turning over of operational control of transmission facilities. We will consider providing additional upward adjustments for greater levels of independence.[12]

2. Merchant Transmission

9. We have conditionally approved rates, terms and conditions for service over merchant transmission facilities. The basic features of the rate treatments allowed for merchant transmission facilities include negotiated rates with the project sponsor assuming all market risk associated with the project and all capacity initially allocated through a fair, non-discriminatory and transparent open season process. Additionally, we required that operational control of the facilities be turned over to an RTO adjacent to or containing the geographic area of the proposed facility and that service be provided under the OATT of the RTO.

10. For example, we conditionally approved the rates, terms and conditions proposed by TransEnergie U.S. Ltd. (TransEnergie) for service over three proposed merchant transmission projects.[13] The first project, the Cross-Sound Cable (CSC) Interconnector, uses an undersea high-voltage direct current (HVDC) cable system to connect the New England Power Pool (NEPOOL) regional transmission system in Connecticut to the New York Independent Transmission System Operator (NYISO) transmission system on Long Island. We also authorized TransEnergie to provide service over a merchant transmission facility, the Harbor Cable interconnector project, an underground and undersea HVDC transmission cable system that would connect the PJM and NYISO transmission systems.[14] Finally, we authorized TransEnergie's proposal with Hydro One Delivery Services, Inc., to provide transmission service over the Lake Erie Link, which is planned as an underwater HVDC transmission system connecting the Ontario Independent Electricity Market Operator to either PJM or the Midwest ISO.[15]

11. Similarly, we conditionally approved the rates, terms and conditions proposed by Neptune Regional Transmission System, LLC, (Neptune) for service over its planned merchant transmission facilities.[16] Neptune proposed to build in four stages several thousand miles of undersea high-voltage direct current transmission lines and associated facilities to connect Maine, New Brunswick and Nova Scotia with capacity-constrained markets in Boston, New York City, Long Island, and Connecticut.

12. We also conditionally authorized a proposal by Northeast Utilities Service Company (NUSCO) to construct a merchant transmission project consisting of a 330 MW direct current cable under Long Island Sound, Connecticut-Long Island Cable.[17]

3. Western Orders

13. We issued a series of orders (Western Orders) to remove obstacles to increased energy supply in the West in response to the severe electric energy crisis facing California and the Western United States during 2000–2001.[18] The Western Orders waived prior notice requirements and granted authorization of market-based rates for wholesale

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[5] *See* PJM Interconnection, L.L.C., 101 FERC ¶ 61,345 (2002).

[6] 92 FERC ¶ 61,276 (2000), *reh'g pending (International Transmission).*

[7] The rates were approved to become effective prior to the date certain, but were subject to refund if RTO participation and independent ownership were not both achieved by that date.

[8] 92 FERC at 61,917.

[9] 98 FERC ¶ 61,142, *order on reh'g,* 98 FERC ¶ 61,368 (2002) *(Trans-Elect).*

[10] The transaction involved a transfer of Michigan Electric Transmission Company, LLC (Michigan Transco) from Consumers Energy Company to Michigan Transco Holdings, LP, an entity with no active or passive ownership interests in market participants. These facilities would be managed by Trans-Elect Michigan, LLC, managing member of Michigan Transco Holdings, LP and a subsidiary of Trans-Elect, Inc. (Trans-Elect), an independent, for-profit transmission company.

[11] 100 FERC ¶ 61,292 (2002), *reh'g pending (Midwest ISO).*

[12] 100 FERC at P 31.

[13] TransEnergie U.S., Ltd., 91 FERC ¶ 61,230, *orders on compliance filing,* 91 FERC ¶ 61,347 and 93 FERC ¶ 61,289 (2000). Additionally, the CSC project facilities were integrated into the NEPOOL regional transmission system operated and administered by ISO New England, Inc., through amendments to the NEPOOL Tariff and Restated NEPOOL Agreement. New England Power Pool, 99 FERC ¶ 61,338 and 100 FERC ¶ 61,259 (2002).

[14] TransEnergie U.S., Ltd., 98 FERC ¶ 61,144 (2002).

[15] TransEnergie U.S., Ltd., 98 FERC ¶ 61,147 (2002).

[16] Neptune Regional Transmission System, LLC, 96 FERC ¶ 61,147, *order on reh'g,* 96 FERC ¶ 61,326 (2001), *order on motion for clarification,* 98 FERC ¶ 61,140 (2002).

[17] Northeast Utilities Service Company, 98 FERC ¶ 61,310 (2002).

[18] *See* Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,277, *further order on removing obstacles to increased energy supply and reduced demand in the Western United States and dismissing petition for rehearing,* 95 FERC ¶ 61,225, *order on reh'g,* 96 FERC ¶ 61,155, *order on reh'g,* 97 FERC ¶ 61,024 (2001).

power sales from generation used primarily for back-up and self-generation, authorized the resale of load reductions at wholesale at market-based rates, waived prior notice requirements for wholesale contract modifications to facilitate demand-side management, permitted demand side management costs to be treated consistently with other types of incremental and out-of-pocket costs, and allowed premiums on equity returns and accelerated depreciation for projects that increase electric transmission capacity and could be in service by November 1, 2002.

4. SMD NOPR

14. On July 31, 2002, we issued a notice of proposed rulemaking that proposed a framework to remedy remaining undue discrimination in the provision of interstate transmission services and in other industry practices.[19] The SMD NOPR also proposed to create ''seamless'' wholesale power markets that allow sellers to transact easily across transmission grid boundaries, through the implementation of standardized transmission service and spot markets and through the elimination of rate pancaking, among other things. Because of their regional scope and configuration, we believe that RTOs can most quickly and efficiently implement standardized transmission service and spot markets and most effectively eliminate rate pancaking.

15. The SMD NOPR points out other concerns identified by market participants through formal complaints, hotline calls, public conferences, and pleadings. Market participants complain about the difficulties they have experienced in gaining equal access to the transmission grid to compete with vertically integrated utilities. Market participants also complain that companies that own both transmission and generation under-invest in transmission because the resulting competitive entry often decreases the value of their generation assets. Much of this problem is directly attributable to the remaining incentives and ability of vertically integrated utilities to exercise transmission market power to protect their own generation market share. Independent transmission providers and owners, operating under a common set of rules, would solve these problems.

16. The SMD NOPR noted that we have long recognized that the ITC business model can bring significant benefits to the industry:

> Their for-profit nature with a focus on the transmission business is ideally suited to bring about: (1) Improved asset management including increased investment; (2) improved access to capital markets given a more focused business model than that of vertically integrated utilities; (3) development of innovative services; and (4) additional independence from market participants.[20]

It concluded that these characteristics of ITCs can have significant benefits for the implementation of Standard Market Design, particularly in the areas of development of transmission infrastructure and structural independence from market participants.[21]

17. The SMD NOPR also proposes that independent transmission providers institute locational marginal pricing to provide market participants with efficient price signals. We expect such price signals to facilitate efficient operation and expansion of the grid; but these price signals alone will not achieve efficient grid operation and expansion in many cases. ITCs would be more likely to relieve congestion through transmission investment than a company that benefits from the value of generation in constrained areas.

18. This proposed policy statement supports the SMD NOPR and Order No. 2000 goals of RTO formation and participation and a standardized, independent competitive wholesale electricity market by creating incentives for RTO participation, independent transmission operation, efficient transmission system operations and new transmission construction and technology investment.

5. Energy Infrastructure Conferences and Reports

19. Beginning in the fall of 2001, we have held four regional conferences on energy infrastructure issues to explore the near- and long-term needs for additional electric transmission facilities in each area of the country and the challenges to timely identification, permitting and construction of those facilities.[22] Several notable reports have been issued on these topics.[23] It is clear that over the past decade, investment in the nation's transmission infrastructure has not kept pace with load growth or with the increased demands brought about by industry restructuring, including open access transmission service and regional service provided by ISOs and RTOs.[24] The result has been increased transmission congestion, which is evidenced by a dramatic increase in low ATC postings and use of Transmission Loading Relief (TLR) procedures,[25] and in significant energy price differentials between regions.[26]

IV. Discussion

A. A Clear Policy is Needed

20. We are committed to achieving the goals envisioned by Order No. 2000 and the SMD NOPR. Accordingly, we are proposing incentives to promote the efficient operation and expansion of the transmission grid through the development of independent RTOs and ITCs. We also propose incentives for the construction of grid enhancements or employment of innovative operating practices that should yield improved performance of the transmission grid and a more competitive wholesale electricity market. Many of our orders to date on transmission rates have been targeted more toward ''hold harmless'' provisions to protect a utility from adverse ratemaking consequences due to transfer of its facilities to an RTO or ITC and have not resulted in true incentive

[19] Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, 67 FR 55,451, FERC Stats. & Regs. ¶ 32,563 (2002) (SMD NOPR).

[20] *See* SMD NOPR at P 132.

[21] *Id.*

[22] *See* transcripts of the Western Conference held on November 2, 2001 (Docket No. AD01–2), the Southeast Conference held on May 9, 2002 (Docket No. AD02–13), the Northeast Conference held on January 31, 2002 (Docket No. AD02–6), and the Midwest Conference held on November 13, 2002 (Docket No. AD02–22). These transcripts, along presentations made at the conferences, are available on our website, *http://www.ferc.gov* /electric/infrastructure.htm.

[23] *See, e.g.*, Transmission Planning for a Restructuring U.S. Electricity Industry, prepared for Edison Electric Institute by Eric Hirst and Brandon Kirby, June 2001 (EEI Report); Conceptual Plans for Electricity Transmission in the West, Report to the Western Governors' Association, August 2001; Financing Electricity Transmission in the West, Report to the Western Governors' Association, February 2002; National Transmission Grid Study, United States Department of Energy (DOE), May 2002 (DOE Grid Study). Cambridge Energy Research Associates is working on a similar study.

[24] *See* EEI Report at 5–8; DOE Grid Study at 7.

[25] In the Southeast, the incidence of TLRs increased 354 percent from the summer of 1999 to the summer of 2000. *See* Staff Report to the Federal Energy Regulatory Commission on the Bulk Power Markets in the United States (Nov. 1, 2000), available at *http://www.ferc.gov* /electric/bulkpower/southeast.pdf, at 3–38. In the Midwest, the incidence increased 472 percent over the same time period. *See* Staff Report to the Federal Energy Regulatory Commission on the Bulk Power Markets in the United States (Nov. 1, 2000), available at *http://www.ferc.gov /electric/bulkpower/midwest.pdf,* at 2–32. *See also* DOE Grid Study at 5–7.

[26] *See* DOE Grid Study at 16–18; Electric Transmission Constraint Study, Staff Report to the Federal Energy Regulatory Commission (December, 2001), available at *http://www.ferc.gov /calendar/commissionmeetings/Discussion_papers/12–19–01/e-1xproject%20cm_121901_presentation%20v3.ppt.*

rate mechanisms.[27] Other rate orders have been narrow and fact-specific, including *Trans-Elect,* where our allowance of a positive monetary incentive was based, in part, on unique circumstances involving stipulations with the affected transmission-dependent utilities and the relevant state commission. Similarly, the incentives we provided in the Western Orders were premised on circumstances unique to California and the Western United States during 2000–2001. Our goal with this proposal is to provide the regulatory certainty the industry needs to move forward.

21. While significant benefits from competition are expected to result from RTOs and ITCs, these benefits will be shared among end-use customers and generators, among others. To assure that transmission owners receive benefits from RTO formation, we believe that it is reasonable to allow an adjustment to be applied to the rates of transmission owners participating in an RTO, or in an ITC within an RTO, as discussed further below.

22. Similarly, significant benefits from increased competition and improved reliability will occur from the construction of needed grid expansions and from other measures that make additional transmission capacity available to market participants. Therefore, it is reasonable to encourage investments in grid capacity expansion by adjusting the rates of transmission owners for investment in certain new transmission facilities that will be under operational control of RTOs and for other actions that result in additional transmission capacity under RTO management being made available to market participants.

23. We believe that this policy could encourage the industry to achieve an independent and regional approach to transmission and to adopt other measures to improve the performance of the transmission grid.

B. Incentive Policy

1. RTO Participation and ITC Formation

24. We propose to provide generic ROE-based incentives to transmission owners that participate in RTOs, and ITCs under RTOs. Under this proposed policy, any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its ROE for all such facilities transferred.

25. ITCs that participate in RTOs *and* meet the independent ownership requirement (discussed below) would qualify for an additional incentive equivalent to 150 basis points applied to the book value of facilities at the time of the divestiture. Such ITCs would be allowed to recover, through transmission rates, a lump sum dollar amount calculated on the basis of a 150 basis point ROE adder. The lump sum dollar amount would be determined at the time of divestiture but would be amortized and recovered over the period during which the incentive is applied. Recovery of the lump sum dollar amount would yield the same amount, after taxes, on a present value basis, as the increase in after-tax returns resulting from application of the ROE adder to current rate base over the period during which the incentive is applied.

26. An ITC will qualify for the incentive based on independent ownership by becoming a participant in a RTO. There must be no active or passive ownership interests in the ITC by market participants and no financial interests by the ITC or its employees in any market participant. For the purpose of applying this independent ownership criterion, ''market participant'' is defined in 18 CFR 35.34(b)(2) with respect to the RTO in which the ITC participates.[28]

27. The ROE-based lump sum incentive for independent ownership would apply prospectively to ITCs.[29] We have already provided an incentive for creation of an ITC for the Michigan Transco system in *Trans-Elect.* We recognize that parties may be currently negotiating divestiture of transmission assets to form ITCs.[30] To avoid delaying such transactions, we propose to permit the parties to any divestiture to an ITC filed with us within 6 months of adoption of this policy statement to propose either the allowance tied to deferred taxes that was approved in *Trans-Elect* or the ROE-based lump sum payment incentive for independent ownership proposed herein.

28. To encourage timely participation in RTOs and formation of ITCs, we propose a deadline of December 31, 2004, to qualify for these incentives. A public utility would qualify for the RTO incentive adder as soon as it has transferred operational control of its transmission facilities to an approved and operating RTO, and would be authorized to receive the incentive for RTO participation until December 31, 2012, with such recovery contingent upon continued participation in a Commission-approved RTO. A public utility that has divested its transmission facilities to an ITC would qualify for the ITC incentive adder once the ITC has transferred operational control of its transmission facilities to an approved and operating RTO and meets the independent ownership criteria, and would receive the incentive for independent ownership until December 31, 2022, with such recovery contingent upon continued independence from market participants and continued participation in a Commission-approved RTO.

29. We seek comment on any clearly defined levels between these two levels of independence (*i.e.*, RTO participation and ITC formation within an RTO) that could merit incentives above the basic 50 basis point incentive proposed for RTO participation. For example, if the ITC directly employs all of the people who work on the transmission system, it will operate with greater independence than if it were staffed by employees of transmission owners affiliated with market participants. Should such behavior be encouraged?

2. Enhanced Grid Performance

30. We also propose a generic ROE-based incentive equal to 100 basis points for investment in new transmission facilities which are found appropriate pursuant to an RTO planning process.

31. We are especially interested in encouraging investment in new technologies that can be installed relatively quickly (*i.e.*, do not require the long siting process for procurement of new rights-of-way, have designs that accommodate modular and portable

[27] For instance, this is true of the allowance for amounts necessary to hold a seller of transmission assets harmless from the income tax consequences of the divestiture, as approved in *International Transmission.*

[28] Order No. 2000 requires case-by-case review of passive ownership proposals to determine if they are adequately independent by design, and also requires follow-up compliance audits to ensure that independence is fully realized. Even so, passive ownership arrangements may not give market participants adequate confidence that transmission service is being provided without undue discrimination. Because of the resources required for case-by-case review and compliance audit, and potential for continued perception of undue discrimination, we do not believe that extending additional incentives for independent ownership to passive ownership arrangements is justified.

[29] Our incentive for RTO participation would be available to public utilities that have already turned over operational control of their facilities to a Commission-approved RTO, but have not yet received the incentive of 50 basis points.

[30] Two transactions have recently been filed and are currently pending our review. Illinois Power Company, *et al.*, (Illinois Power) filed in Docket No. EC03–30–000, *et al.*, for, among other things, the sale of all of Illinois Power's right, title, and interest in its jurisdictional transmission facilities and related assets. Additionally, ITC Holdings Corporation *et al.*, filed in Docket No. EC03–40–000, *et al.*, for approval of DTE Energy's sale of International Transmission Company.

application, and may be environmentally benign). Such technologies include: (1) Improved materials that allow significant increases in transfer capacity using existing rights-of-way and structures; (2) equipment that allows greater control of energy flows, enabling greater use of existing facilities; (3) sophisticated monitoring and communication equipment that allows real-time rating of transmission facilities, facilitating greater use of existing transmission facilities; and (4) other measures. Such technologies appear to offer significant promise to expand grid capacity, reduce congestion, improve reliability, and enhance wholesale competition without great cost or delay. We seek comment on what we can do to encourage investment in such technologies, what criteria we should use to determine that a technology investment merits an incentive, and how to structure such incentives. For example, these technology options may not always be considered in RTO expansion plans, so a requirement that new investment be made pursuant to the RTO planning process could foreclose the use of many promising technologies.

32. We realize that the most timely and cost-effective ways to meet demand for additional grid capacity will not always be additional transmission facilities; rather, they may be innovative operating practices, such as operation of facilities beyond traditionally accepted limits, distributed generation, demand response or demand-side management. We invite comments on what actions other than investment in new facilities should receive incentives, what form those incentives should take, and how we can encourage them.

33. We also would like suggestions on how to measure improved performance of the grid. What additional guidance or assurances are needed from us in order to encourage actions that result in improved grid performance?

34. We want to ensure that market solutions prevail where appropriate. Are additional measures needed to facilitate and encourage merchant transmission to relieve the nation's transmission bottlenecks?

35. We seek comments on whether the proposals set forth in this policy statement strike an appropriate balance. Are there additional incentives or incentive levels consistent with pricing for a monopoly service? Should we consider alternatives to ROE-based incentives such as accelerated depreciation for investment in critical transmission facilities? Finally, we seek comments on whether the duration of the proposed incentives is appropriate.

3. Implementation

36. Once the final policy statement has been issued, eligible public utilities would need to make a filing pursuant to section 205 of the Federal Power Act and receive Commission authorization to receive the proposed incentives. Unlike the innovative rate proposals in Order No. 2000, we would not require that public utilities file a cost-benefit analysis to qualify for the incentives associated with RTO participation and divestiture of transmission assets.[31]

37. The ROE-based incentives would be subject to a cap on the overall ROE, including incentive adders, equal to the top of the range of reasonable ROEs for a proxy group consisting of the investor-owned transmission owners participating in the relevant RTO whose shares are publicly traded. We note that the sum of these incentives, totaling 300 basis points,[32] would have resulted in an overall ROE within the zone of reasonableness established for the Midwest ISO Transmission Owners in Docket No. ER02–485–000. We believe that these incentives will encourage RTO participation and independent ownership in a timely fashion and that customers will benefit from an independent and regional approach to the provision of electric transmission service. The additional incentives proposed for new investment in transmission facilities, in combination with RTO system expansion planning, should encourage long-overdue investment in new transmission, increase the number of generators who can compete in the market place, improve efficiency and reliability, and ultimately lower the costs paid by customers for electricity.

38. The incentives proposed here are not the only ones we will consider. Public utilities may continue to submit other innovative rate proposals in accordance with 18 CFR 35.34(e)(1). We will determine the reasonableness of such proposals on a case-by-case basis. However, we clarify that the proposed ROE incentives are intended to encourage RTO and ITC participation and new investment and not to serve in lieu of innovative rate mechanisms that hold utilities harmless from adverse rate effects from the transfer of their facilities to an RTO or ITC within an RTO (*e.g.*, innovative rates based on bundled retail rates or an allowance for amounts necessary to hold a seller of transmission assets harmless from the income tax consequences of the divestiture).

[31] We expect that transmission expansions undertaken via the RTO planning process would not need an additional cost-benefit analysis. However, we seek comments on what analysis, if any, should be required to qualify for the incentives for other measures to promote efficient operation and expansion of the transmission grid.

[32] For new transmission investment constructed pursuant to an RTO planning process and then subject to divestiture to an ITC, the total incentive premium provided by this proposal would be the sum of 50 basis points for RTO participation plus 150 basis points for ITC formation plus 100 basis points for transmission enhancements.

V. Comment Procedures

39. We invite interested persons to submit written comments on the proposals in this notice, including any related matters or alternative proposals. Comments are due 45 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL03–1–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

40. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on our Web site at *http://www.ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. We will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

41. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

42. All comments will be placed in our public files and will be available for inspection in our Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through the Commission's Homepage using the FERRIS link, as explained below.

VI. Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, we provide all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5

p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

44. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

45. User assistance is available for FERRIS and the Commission's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1699 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 16

[AAG/A Order No. 004–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records entitled ''Clandestine Laboratory Seizure System (CLSS), Justice/DEA–002,'' from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5) and (e)(8); and (g) of the Privacy Act of 1974.

DATES: Submit any comments by February 26, 2003.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to an exemption pursuant to 5 U.S.C. 552a(j) and (k).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a), 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510 and 534; 31 U.S.C. 3717 and 9701.

2. Section 16.98 is amended as follows: (a) By revising paragraph (c)

(b) By revising the first sentence of paragraph (d)

(c) By removing paragraphs (g) and (h)

The revisions read as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.

* * * * *

(c) Systems of records identified in paragraphs (c)(1) through (c)(7) below are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5), (e)(8); and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) below are also exempted pursuant to the provisions of 552a(k)(1) from subsections (c)(3); (d)(1), (2), (3) and (4); and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)

(2) Clandestine Laboratory Seizure System (Justice/DEA–002)

(3) Investigative Reporting and Filing System (Justice/DEA–008)

(4) Planning and Inspection Division Records (Justice/DEA–010)

(5) Operation Files (Justice/DEA–011)

(6) Security Files (Justice/DEA–013)

(7) System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). * * *

* * * * *

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–1670 Filed 1–24–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940b; FRL–7443–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revision to the Florida State Implementation Plan (SIP) submitted on September 7, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration and to include additional provisions.

In the Final Rules Section of this **Federal Register**, the EPA is approving Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 26, 2003.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at (404) 562–9035 (E-mail: *lesean.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 8, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–1633 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 61 and 62

[SD–001–0013, SD–001–0014, SD–001–0015; FRL–7443–7]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. The revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. EPA is also proposing to remove from the SIP or not approve into the SIP, certain provisions of the State's air quality rules because they are not related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) and are not appropriate for inclusion in the SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before February 26, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: For the purpose of this document, we are giving meaning to certain words as follows: (a) The words ''EPA,'' ''we,'' ''us'' or ''our'' mean or refer to the United States Environmental Protection Agency; (b) The words State or South Dakota mean the State of South Dakota unless the context indicates otherwise.

In this document we are proposing to partially approve and partially disapprove SIP revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. These revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. We have already acted on several portions of the State's May 6, 1999 submittal. Below is a discussion of the revisions to the State's air quality rules and whether or not they are being proposed for approval into the SIP. We also identify those provisions of the submittal that have already been acted on. The June 30, 2000 submittal also revised the State's New Source Performance Standards (NSPS) in Chapter 74:36:07. We have addressed the majority of the NSPS revisions in Chapter 74:36:07 in a separate document (67 FR 57520).

I. Summary of SIP Revision

A. Chapter 74:36:01, South Dakota Air Pollution Control Program (SDAPCP)

The State's May 6, 1999 submittal made the following revisions to the Chapter 74:36:01—Definitions:

1. Minor changes were made to the definitions of ''allowable emissions,'' ''final permit,'' ''permit modification,'' and ''reference method.''

2. Two definitions were deleted, ''FAA'' and ''organized disposal system,'' because earlier rule revisions had deleted the sections that contained these words.

3. Substantive changes were made to the following definitions: (a) ''minor source'' was revised to indicate that a minor source will be based on its potential emissions of a *criteria pollutant* rather than *any regulated pollutant;* (b) ''particulate matter'' was revised to read ''a broad class of chemically and physically diverse substances that exist as discrete particles, liquid droplets, or solids over a wide range of sizes''; (c) ''PM10'' was revised to indicate that an *equivalent method,* in addition to the applicable reference method, may be used to measure PM10; and (d) ''VOC'' was revised to exclude additional compounds of carbon from the definition.

4. A definition for ''PM2.5'' was added.

5. Minor changes were made in the sections ''Administrative permit amendment defined'' (section 74:36:01:03), ''Applicable requirements of Clean Air Act defined'' (74:36:01:05), and ''Significant defined'' (section 74:36:01:17).

6. Imbedded in the State's prior definition of ''major modification defined'' (section 74:36:01:07) was a definition for ''physical change or change in the method of operation.'' The State has deleted the definition of ''physical change or change in the method of operation'' from the definition of ''major modification defined'' and added a separate definition for ''physical change or change in the method of operation'' at section 74:36:01:20.

7. The definition of ''major source defined'' (section 74:36:01:08) was revised to indicate that controls are considered when determining whether a source is major under section 112 of the Clean Air Act.

8. The definition of ''modification defined'' (section 74:36:01:10) was revised to delete the references to what is not considered a modification and the references to the permitting required upon modification.

We have reviewed all the revisions identified above in (1) through (8). We believe the revisions are acceptable and are proposing to approve them into the SIP, or are deleting provisions from the SIP as appropriate.

The definitions of PM10 and PM2.5 may appear to contain director discretion provisions;[1] both definitions indicate that pollutants will be ''measured by an applicable reference or equivalent method.'' However, because of other provisions in the State's rules and/or our action on those other provisions, we do not believe the

[1] A director discretion provision would allow the State to revise portions of a SIP without completing a formal SIP revision. Because we believe the SIP can only be revised through a formal SIP revision, we usually do not approve SIPs, or parts of SIPs, that contain director discretion provisions.

definition of PM2.5 or PM10 will result in unacceptable director discretion provisions. Specifically, PM10 or PM2.5 will either be measured by ambient monitors or through stack performance testing specified in the federal rules. Section 74:36:02:03, Methods of sampling and analysis, discusses the methods to sample ambient concentrations of the NAAQS. This section reads, ''air pollutants of particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead listed in 40 CFR Part 50 shall be measured by the reference method or methods stated in 40 CFR Part 50, Appendix A to N, inclusive (July 1, 1999) or an *equivalent method* designated in accordance with 40 CFR Part 53'' (emphasis added). 40 CFR part 53 indicates that for a method to be an equivalent method, it must be designated under 40 CFR part 53; equivalent methods are approved by EPA, and the State department cannot approve an equivalent ambient monitoring method. Section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads ''all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; and Part 51, Appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; or Part 51, Appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods.'' As discussed later, we are proposing to disapprove the second sentence of 74:36:11:01 because it contains a director discretion provision. We are proposing to approve the change in date for the reference to appendix M in the first sentence. Therefore, the approved SIP will not allow the State department to approve alternative stack performance test methods.

B. Chapter 74:36:02 SDAPCP—Ambient Air Quality

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:02—Ambient Air Quality:

1. With the May 6, 1999 submittal, the State revised its Ambient Air Quality rule to incorporate a more recent version of the Code of Federal Regulations (CFR) and the revisions to the NAAQS promulgated by EPA in 1997. The changes to the NAAQS involve revisions to the 24-hour and annual standard for PM10, revisions to the ozone standard, and the addition of 24-hour and annual standards for PM2.5. The following sections of the State rules were revised: 74:36:02:02—Ambient air quality standards; 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

2. Because of the challenge to EPA's revised NAAQS decision, with the June 30, 2000 submittal the State is revising part of what it submitted on May 6, 1999 and incorporating into the ambient air quality rule in section 74:36:02:02 the following EPA NAAQS: (a) Sulfur oxides referenced in 40 CFR 50.4 and 50.5, as in effect July 1, 1999; (b) PM10 referenced in 40 CFR 50.6, as in effect July 1, 1997; (c) PM2.5 referenced in 40 CFR 50.7(a)(1), (b), and (c), as in effect July 1, 1999; (d) carbon monoxide referenced in 40 CFR 50.8, as in effect July 1, 1999; (e) ozone referenced in 50 CFR 50.10, as in effect July 1, 1999; (f) nitrogen oxides referenced in 40 CFR 50.11, as in effect July 1, 1999; and (g) lead referenced in 40 CFR 50.12, as in effect July 1, 1999.[2]

The overall result is that the State is reincorporating our old PM10 NAAQS (originally promulgated on July 1, 1987 (52 FR 24663) and contained in the July 1, 1997 edition of the CFR) into the SIP, incorporating the new PM2.5 and 8-hour ozone NAAQS (promulgated on July 18, 1997, 62 FR 38711 and 62 FR 38894, respectively) into the SIP, and *not* incorporating the new PM10 NAAQS (promulgated on July 18, 1997, 62 FR 38711) or the prior 1-hour ozone NAAQS (reinstated on July 20, 2000, 65 FR 45200) into the SIP. Even though the State's rule does not include the 1-hour ozone NAAQS, which was reinstated on July 20, 2000 (65 FR 45200), the federal 1-hour ozone NAAQS still applies in South Dakota. In the future, the State should revise its SIP to include the 1-hour ozone NAAQS.

In addition, the State revised its ambient air quality rule to incorporate a more recent version of the CFR. The following sections of the rule were revised: 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

C. Chapter 74:36:04 SDAPCP—Operating Permits for Minor Sources

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:04—Operating Permits for Minor Sources:

(1) Substantive changes were made to section 74:36:04:03, Operating permit exemptions. This section lists the types of facilities and units that are exempt from the requirement to obtain a minor air quality permit. An additional subsection is included that exempts units with the potential to emit two tons or less per year of any criteria pollutant before the application of control equipment. However, the criteria pollutant emissions from the unit must be included in determining if the source is a minor or major source. The State also revised some subsections of this rule to add the word ''unit'' in appropriate places. This will help clarify that this section also exempts certain units, not just facilities.

(2) Substantive changes were made to section 74:36:04:09, Permit application—Completeness review. This section identifies relevant deadlines for review of an application to determine if it is complete. This section is being revised to indicate that a facility has 20 working days (or longer if approved by the Department) to submit additional information if the application is determined to be incomplete or if additional information is necessary to evaluate the application.

(3) Substantive changes were made to sections 74:36:04:11 through 74:36:04:14—Permitting process. Sections 74:36:04:11 through 74:36:04:14 outline how the applicant and the public are involved in the permitting process. These revisions allow the applicant or public the choice of either commenting on or contesting the department's draft permit during the 30-day public notice period. If the department receives comments, the

[2] The 1997 revised NAAQS for ozone and PM10 and new NAAQS for PM2.5 were challenged by industry groups and several States. As a result, the United States Court of Appeals for the District of Columbia Circuit vacated the 1997 NAAQS and remanded them to EPA. *See, American Trucking Ass'ns, Inc.* v. *U.S. EPA,* 173 F.3d 1027 (D.C.Cir 1999). EPA petitioned for review in the United States Supreme Court, which reversed significant portions of the decision below, but affirmed on the issue of implementation of the revised NAAQS, holding EPA's implementation policy unlawful and remanding the case to the Court of Appeals for further proceedings. *See, Whitman* v. *American Trucking Ass'ns Inc.,* 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed. 2d 1 (February 27, 2001). The revised ozone and PM–10 NAAQS are not being implemented at present. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit; *American Trucking Association, Inc., et al.* v. *United States Environmental Protection Agency* vacated the 1997 PM10 standard. Because of the Court ruling, we continue to implement the pre-existing PM10 standard.

department will work with the applicant and the person who submitted comments, if other than the applicant, to resolve the concern. If the applicant or the other person who commented is not satisfied with the results of the negotiations, the commentor will be given 30 days from receiving the department's final permit decision to request a contested case hearing on the final permit decision.

(4) Substantive changes were made to section 74:36:04:18, Operating permit revision. This section allows a facility to revise an existing permit. The changes modify this section to clarify what is necessary to revise an existing facility permit.

(5) Substantive changes were made to section 74:36:04:19 and 74:36:04:20. These sections identify permit revisions that are eligible for an administrative permit amendment. The State has revised these sections: to clarify what the facility needs to submit to revise a permit through the administrative permit amendment process; delete repetition in the rules; allow facilities to implement a proposed revision that is considered an administrative permit amendment immediately upon notifying the department; and require the department to determine if an administrative permit amendment is applicable to the proposed revision within 15 days of receiving a request for a permit revision.

(6) Substantive changes were made to section 74:36:04:20.01, Minor permit amendment required. This section identifies permit revisions that are eligible for a minor permit amendment. The State is revising this section to clarify that a source may request a minor permit amendment, through the administrative permit amendment processed discussed above, for a change that does not constitute a modification and is not prohibited under any applicable requirement under Title I of the Clean Air Act.

(7) Substantive changes were made to section 74:36:04:20.04, Department deadline to approve minor permit amendment. This section outlines the time line for reviewing a proposed permit revision to determine if it is a minor permit amendment. This section has been revised to explain that a minor permit amendment is issued by the secretary without the procedural requirements applicable to obtain an operating permit. Additionally, this section has been revised to allow a facility to make the proposed minor change seven days after notifying the Department.

(8) Minor changes were made to section 74:36:04:22, Source status change—New permit required. The State has revised a reference in this section.

We have reviewed the revisions identified in (1) through (8) above. We believe the revisions are acceptable and are proposing to approve them into the SIP.

D. Chapter 74:36:05 SDAPCP—Operating Permits for Part 70 Sources

The State's May 6, 1999 submittal made revisions to Chapter 74:36:05—Operating Permits for Part 70 Sources. We believe we have no legal basis in the Act for approving any provisions of the operating permit program into the SIP. Therefore, we are not taking action to incorporate Chapter 74:36:05—Operating Permits for Part 70 Sources, or the revisions submitted on May 6, 1999, into the SIP. However, we fully approved South Dakota's Title V program on January 29, 1996 (61 FR 2720). We will take appropriate action on the revisions to South Dakota Title V program at a later date.

E. Chapter 74:36:06 SDAPCP—Regulated Air Pollutant Emissions

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:06—Regulated Air Pollutant Emissions:

1. Minor changes were made to the following sections: Allowable emissions for fuel burning units (section 74:36:06:02) and Allowable emissions for process industry units (section 74:36:06:03).

2. Substantive changes were made to Open burning practices prohibited (section 74:36:06:07). Specifically, the State added a sentence to section 74:36:06:07(1) that reads, ''an exception for crude oil is allowed as a remediation alternative for soils contaminated with crude oil if a person submits the information requested in § 74:10:05:11.04 and the secretary approves the alternative remediation process; * * *'' We believe that this is not a relaxation of the open burning rules. The State's open burning rules were revised in 1996. Prior to the 1996 revisions, the open burning rules were written broadly and listed what could be burned. In December 1996, the State revised and condensed the open burning rules. The rules were written to indicate what could not be burned. We approved the December 1996 rules on October 19, 1998 (63 FR 55804). The State believes it inadvertently failed to incorporate the exemption for soils contaminated with crude oil when it revised the rules in Dcember 1996. Therefore, adding the exemption for soil contaminated with crude oil should not be considered a relaxation. Additionally, the State has indicated that the burning of spilled crude oil has occurred infrequently. They recall only one time when crude contaminated soil was burned in the oil fields in northwestern South Dakota.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

F. Chapter 74:36:07 SDAPCP—New Source Performance Standards

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:07—New Source Performance Standards:

1. The May 6, 1999 submittal added provisions for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (74:36:07:06.1) and for those on which construction commenced after June 20, 1996 (74:36:07:06.2); modified previously adopted provisions for municipal combustors constructed after September 20, 1994 (74:36:07:07.1); modified previously adopted provisions for existing municipal solid waste landfills (74:36:07:34–42) and for new municipal solid waste landfills (74:36:07:43); and deleted a permitting provision for asphalt plants (section 74:36:07:11). Except for the provisions for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01) and municipal solid waste landfills (section 74:36:07:34–42), which we discuss below, we already approved these as SIP revisions on May 22, 2000 (65 FR 32033).

2. The June 30, 2000 submittal requested that new source performance standards (NSPS) regulations currently in the SIP be removed from the SIP and delegated to the State. In addition, the June 30, 2000 submittal references more recent versions of the Code of Federal Regulations (CFR). Except for the revisions to sections 74:36:07:34–42 and 74:36:07:06.1, we already addressed the June 30, 2000 revisions in the **Federal Register** on September 11, 2002 (67 FR 57520). The revisions to sections 74:36:07:34–42 and 74:36:07:06.1 are discussed below.

With respect to the rules added and modified for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate section

74:36:07:06.01 into the SIP. However, on June 22, 2000 (65 FR 38732), we did approve this section as meeting section 111(d) of the Act. See 40 CFR 62.10360–10362. Also, the June 30, 2000 revision to section 74:36:07:06.1 updates the incorporation by reference to 40 CFR part 60 as of July 1, 1998. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10360.

With respect to the rules added and modified for existing municipal solid waste landfills (sections 74:36:07:39–42), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate sections 74:36:07:39–42 into the SIP. However, on June 3, 1999 (64 FR 29796), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.10350–10352. Also, the June 30, 2000 revision to sections 74:36:07:34–42.01 updates the incorporation by reference to 40 CFR 60, as of July 1, 1999. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10350.

G. Chapter 74:36:08 SDAPCP—National Emission Standards for Hazardous Air Pollutants

The State's May 6, 1999 and June 30, 2000 submittals made revisions to Chapter 74:36:08, National Emission Standards for Hazardous Air Pollutants, by adding new standards as well as revising existing provisions. We believe we have no legal basis in the Act for approving these rules into the SIP. In addition, on May 16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR parts 61 and 63 to the State. Given that the State now has delegation of authority for the NESHAPs in 40 CFR part 61 and for the Maximum Achievable Control Technology (MACT) standards, in 40 CFR part 63, pursuant to 110(k)(6) of the Act, we are proposing to remove Chapter 74:36:08—National Emission Standards for Hazardous Air Pollutants from the SIP and not proposing to approve into the SIP any new or revised provisions adopted by the State to meet 40 CFR parts 61 and 63. We are proposing to update the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPs are now delegated to the State.

H. Chapter 74:36:11 SDAPCP—Performance Testing

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:11—Performance Testing:

1. The State's May 6, 1999 SIP revision modified the requirements in section 74:36:11:04, Testing new fuels or raw materials. We already approved the May 6, 1999 revisions to the rule on February 3, 2000 (65 FR 5264).

2. The State's June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:11:01, Testing new fuels or raw materials. We believe this revision makes the State's rule consistent with ours and are proposing to approve it into the SIP.

However, section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads ''all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; part 60, Appendix A; § 63.14; part 63, appendix A; and part 51, appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods.''

The above rule is problematic because the second sentence contains a director discretion provision (see footnote 1). Specifically, this rule allows the State to determine acceptable performance tests when Federal guidelines do not apply, without EPA approval and without the opportunity for public notice and comment. Our concern is that the State may determine that a required test method is not applicable when it really should be. Additionally, the State may determine a test method is applicable, when under federal law it would not be applicable. Under section 110(i) of the CAA, we interpret that director discretion provisions are prohibited. Therefore, we are proposing to disapprove the second sentence of section 74:36:11:01. To make the second sentence of section 74:36:11:01 an approvable SIP revision, it should be revised to read ''to the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department and EPA approval.''

I. Chapter 74:36:12 SDAPCP—Control of Visible Emissions

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:12—Control of Visible Emissions:

1. Section 74:36:12:01, Restrictions on visible emissions, limits visible emissions from permitted units to less than 20 percent opacity. This section lists an exception to the 20 percent limits as specified in chapter 74:36:15. However, chapter 74:36:15 was previously repealed. Therefore the State is deleting the exception and reference to chapter 74:36:15 with the May 6, 1999 submittal.

2. The June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:12:01, Restrictions on visible emissions.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

J. Chapter 74:36:13 SDAPCP—Continuous Emission Monitoring Systems

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:13—Continuous Emission Monitoring Systems:

1. With the May 6, 1999 submittal, the State added section 74:36:13:08, Compliance assurance monitoring. This section requires that the owner or operator of a unit that is subject to 50 CFR 64.2 must comply with 40 CFR 64.1 and 64.3 to 64.10, inclusive, as published in 62 FR 54940–54946 (October 22, 1997).

2. With the June 30, 2000 submittal, the State incorporates a more recent version of the CFR referenced in the following sections: 74:36:13:02, Minimum performance specifications for all continuous emission monitoring; 74:36:13:03, Reporting requirements; 74:36:13:04, Notice to department of exceedance; and 74:36:13:07, credible evidence. In addition, the State has deleted the reference to the **Federal Register** in section 74:36:13:08, Compliance assurance monitoring, and instead references the July 1, 1999 CFR.

We have reviewed the revisions identified in (1) and (2). We believe we have no legal basis in the Act for approving the Compliance Assurance Monitoring rule in section 74:36:13:08 into the SIP. Therefore, we are not proposing to approve the revision identified in (1) above into the SIP. We believe the revisions identified in (2) above are acceptable and are proposing

to approve them into the SIP, except for the revisions to section 74:36:13:08, which we indicated cannot be approved into the SIP.

K. Chapter 74:36:16 SDAPCP—Acid Rain Program

The State's May 6, 1999 and June 30, 2000 submittals revise provisions of the State's acid rain rules. We have not previously included the State's acid rain provisions in the SIP. We believe we have no legal basis in the Act for approving these rules into the SIP. Therefore, we are not proposing to incorporate the May 6, 1999 or June 30, 2000 revisions to the acid rain rules into the SIP.

II. Final Action

We are proposing to partially approve and partially disapprove portions of the revisions to South Dakota's Air Pollution Control Regulations submitted by the Governor's designee on May 6, 1999 and June 30, 2000, except for the following provisions that we are not acting on, or have acted on previously. The sections of the rules that we are proposing to approve will replace the same numbered sections that have been previously approved into the SIP. We are not acting on the following as SIP revisions because they are not appropriate to be included in the SIP: sections 74:36:07:06.01; 74:36:07:34–42.01; and 74:36:13:08; and chapters 74:36:05, 74:36:08, and 74:36:16.

The SIP provisions that we previously acted on: 74:36:07:06.2, 74:36:07:07.01, 74:36:07:11 (repealed), 74:36:07:43, and 74:36:11:04.

Also, the State made revisions to previously approved 111(d) plans. Specifically, section 74:36:07:06.01 was updated to incorporate by reference 40 CFR part 60, as of July 1, 1998 and sections 74:36:07:34–42:01 were updated to incorporate by reference 40 CFR part 60, as of July 1, 1999. We are proposing to approve these revisions to the 111(d) plans.

We are proposing to approve the removal of chapter 74:36:08 from the SIP and updating the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPS are now delegated to the State.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the South Dakota SIP revisions that are the subject of this document will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State's revisions are as no less stringent than requirements currently contained in their SIP. Additionally, currently there are no nonattainment areas in South Dakota.

III. Statutory and Executive Order Reviews

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

This proposed rule also does not have 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''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 Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–1775 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 010903D]

Atlantic Highly Migratory Species (HMS); Issues and Options paper for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP); Shark Management Measures

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

ACTION: Notice of availability (NOA) of an issues and options paper; notice of public scoping meetings; request for comments.

SUMMARY: NMFS announces the availability of a paper on issues and options for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. The issues-and-options paper examines management options to rebuild or prevent overfishing of Atlantic sharks, consistent with the large coastal sharks (LCS) and the small coastal sharks (SCS) stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act(Magnuson-Stevens Act), and other relevant Federal laws. NMFS is requesting comments on a wide range of commercial and recreational management measures including, but not limited to, quotas, minimum sizes, and prohibited species.

DATES: Comments on this action must be received no later than 5 p.m., local time, March 17, 2003.

The public scoping meetings will be held in February and March. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on this action should be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713–1917. Comments will not be accepted if submitted via email or Internet. Copies of the issues and options paper can be obtained from the HMS website at: *http://www.nmfs.noaa.gov/sfa/hmspg.html*, or by contacting Karyl Brewster-Geisz at (301) 713–2347.

The public scoping meetings will be held in Silver Spring, MD; Montauk, NY; Ocean City MD; Manteo, NC; Cocoa Beach, FL; Madeira Beach, FL; and Port Aransas, TX. For specific locations, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks is implemented by regulations at 50 CFR part 635.

Background

On November 15, 2002, NMFS published a notice of intent to prepare an EIS (67 FR 69180). In this notice, NMFS also announced its intent to amend the HMS FMP. Based on the 2002 stock assessments, NMFS believes the implementation of new management measures via an amendment to the HMS FMP is necessary to rebuild or prevent overfishing of Atlantic sharks. NMFS anticipates completing this amendment and any related documents by January 1, 2004.

Large Coastal Sharks

The LCS complex is composed of several species including, but not limited to, sandbar, blacktip, spinner, bull, and tiger sharks. Since the 1993 Shark Fishery Management Plan, LCS have been considered overfished. The latest stock assessment of LCS in the U.S. Atlantic and Gulf of Mexico, available in October 2002 (67 FR 64098), provides an update on the status of LCS stocks and projects their future abundance under a variety of catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts. The 2002 assessment includes catch estimates, new biological data, and a number of fishery-independent catch rate series, as well as extended fishery-dependent catch rate series.

The results for the LCS complex indicate that overfishing could still be occurring and the resource may be overfished. However, for sandbar sharks, the stock assessment indicates that, while overfishing is occurring, the current biomass is near, or somewhat above, maximum sustainable yield (MSY). Additionally, the stock assessment indicates that no reduction in catch for blacktip sharks is needed to maintain the stock at current levels and that some increase may be sustainable in the long term. Under the term of a court-approved settlement agreement, this stock assessment was independently peer reviewed. The peer review process was completed on December 20, 2003. The peer reviews were generally positive.

Copies of the LCS stock assessment and peer review are available for review (*see* **ADDRESSES**).

Management Options

Small Coastal Sharks

The SCS complex comprises four species including Atlantic sharpnose, blacknose, bonnethead, and finetooth. The 1992 stock assessment classified SCS as being fully utilized. The 2002 stock assessment of SCS in the U.S. and Gulf of Mexico indicates that the current level of removals is sustainable for the SCS aggregate. Aggregate biomass levels for the SCS aggregate are estimated at or above those which could produce MSY, and are not considered to be overfished. However, recent fishing mortality of finetooth sharks exceeds the fishing mortality at MSY, indicating overfishing is occurring for this species.

Copies of the SCS stock assessment and the peer review of the LCS stock assessment are available for review (see **ADDRESSES**).

Management Options

NMFS requests comments on management options for this action.

Specifically, NMFS requests comments on commercial management options including quota levels, regional and seasonal quotas, trip limits, minimum sizes, the application of dead discards and state landings after a Federal closure to the quota, the counting quota of over- and underages, and fishery closure and opening notices. Additionally, NMFS request comments on recreational management options including retention limits, minimum sizes, authorized gear, and landing requirements. NMFS also seeks comment regarding deep water and prohibited shark species, display quotas, time/area closures and the organization of species groupings. Comments received on this action will assist NMFS in determining the options for rulemaking to conserve and manage shark resources and shark fisheries.

Within the comment period established in this action, NMFS will hold seven public scoping meetings to gather public comment on the implementation of new management measures for Atlantic sharks.

Schedule of Public Scoping Meetings

The dates, times, and locations of the meetings are scheduled as follows:

1. Monday, February 10, 2003 - Silver Spring, MD, 1–6 p.m.

Holiday Inn
8777 Georgia Avenue
Silver Spring, MD 20910
Contact: Karyl Brewster-Geisz @ (301) 713–2347

2. Wednesday, February 19, 2003 - Montauk, NY,7–9 p.m.

Montauk Fire House

12 Flamingo Avenue
Montauk, NY 11954
Contact: Heather Stirratt @ (301) 713–2347

3. Tuesday, February 25, 2003 - Coco Beach, FL, 7–9 p.m.
Cocoa Beach Public Library
550 North Brevard Avenue
Cocoa Beach, FL 32931
Contact: Greg Fairclough @ (727) 570–5447

4. Thursday, February 27, 2003 - Madeira Beach, FL,7–9 p.m.
City of Madeira Beach, City of Madeira Beach Auditorium
300 Municipal Drive
Madeira Beach, FL 33708
Contact: Greg Fairclough @ (727) 570–5447

5. Wednesday, March 5, 2003 - Ocean City, MD, 7–9 p.m.
Ocean City Council Chambers
301 Baltimore Avenue
Ocean City, MD 21842
Contact: Karyl Brewster-Geisz @ (301) 713–2347

6. Thursday, March 6, 2003 - Manteo, NC, 7–9 p.m.
North Carolina Aquarium
Roanoke Island
Airport Road
Manteo, NC 27954
Contact: Heather Stirratt @ (301) 713–2347

7. Tuesday, March 11, 2003 - Port Aransas, TX,7–9 p.m.
University of Texas
Marine Science Institute
Visitor's Center (located on Cotter St. near beach)
750 Channel View Drive
Port Aransas, TX 78373
Contact: Heather Stirratt @ (301) 713–2347

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713–2347.

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

Dated: January 22, 2003.

Richard W. Surdi,

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

[FR Doc. 03–1786 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 17
Monday, January 27, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TB–03–04]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: March 11, 2003, 9 a.m.

ADDRESSES: The meeting will be held at the Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elect officers, recommend the level of service to be provided to producers by AMS, review the financial status of the tobacco inspection program, recommend the user fee rate needed to maintain the desired level of service for the 2003–2004 marketing season, and review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107–76; 7 U.S.C. 511s).

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by March 5, 2003, and inform us of your needs.

Dated: January 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1753 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003 Crop Cane Sugar Marketing Allotment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on providing an allocation to a new entrant processor and allotment to a new entrant State and possible impacts on existing cane processors and producers. CCC will also receive comments on the evidence CCC should require from a new entrant to demonstrate eligibility for a marketing allocation.

DATES: The public hearing will be held January 29, 2003, in the Jefferson Auditorium of the U.S. Department of Agriculture (USDA) South Building, 1400 Independence Ave, SW., Washington, DC. The hearing will start at 10 a.m. eastern standard time (e.s.t.).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing as requested by sugarcane producers and processors regarding the application of the Arizona Sugar Factory, L.L.C., for a cane sugar marketing allocation for the 2003 crop year. The Arizona Sugar Factory is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and an increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California and Arizona, States that currently have no allotment (*i.e.*, a new entrant State).

Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. To make an allocation to a processor in California or Arizona, the Secretary will have to provide those States with an allotment. CCC considers the adverse effects on existing cane processors and producers when determining whether a new entrant processor allocation and new entrant State allotment are warranted. Also, prior to the promulgation of the 2003-crop marketing allotments, the Arizona Sugar Factory must provide satisfactory evidence that it has a viable processing facility, an adequate sugarcane supply, and a market for the cane sugar product. If approved, the new California or Arizona allotment will be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State when the 2003 crop allotments are determined by USDA.

CCC will use this forum to collect comments on (1) any adverse effects that the provisions of an allocation to the Arizona Sugar Factory, L.L.C., and an allotment to California or Arizona may have on existing cane processors and producers, and (2) the evidence CCC should require from a new entrant to demonstrate the ability to process, produce, and market raw cane sugar. Attendance is open to interested parties.

The hearing will be held on January 29, 2003, from 10 a.m. to 2 p.m. e.s.t. in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave., Washington, DC.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. A signup sheet for oral statements will be available at the entrance of the Jefferson Auditorium one hour before the hearing begins. Oral statements will

be made in the order the request was received. Anyone wishing to make a written statement in lieu of an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; Telephone: (202) 720–4146; Fax: (202) 690–1480; e-mail: *barbara.fecso@usda.gov.* Statements must be received by close of business on January 29, 2003.

Persons with disabilities who require special accommodations to attend or participate in the meeting should contact Barbara Fecso.

Signed in Washington, DC on January 22, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–1821 Filed 1–23–03; 12:43 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections related to the Summer Food Service Program, OMB number 0584–0280.

DATES: Comments on this notice must be received or postmarked by March 28, 2003.

ADDRESSES: 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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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. Comments and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION: Contact Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: 2/28/03.

Type of Request: Extension of a currently approved collection.

Abstract: Section 13 of the National School Lunch Act (NSLA), as amended, authorizes the Summer Food Service Program. The Summer Food Service Program provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The food service to be provided under the Summer Food Service Program is intended to serve as a substitute for the National School Lunch Program and the School Breakfast Program during times when school is not in session. Under the program, a sponsor receives reimbursement for serving nutritious, well-balanced meals to eligible children at food service sites. Subsection 13(m) of the NSLA directs that ''States and service institutions participating in programs under this section shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.'' Pursuant to this provision, the Food and Nutrition Service has issued Part 225 of Title 7 of the Code of Federal Regulations to implement the Summer Food Service Program.

Respondents: State agencies, sponsors, camps and other sites, and households.

Estimated Number of Respondents: 54 State agencies, 3,789 sponsors, 4,436 camps and other sites, and 69,722 households.

Total Number of Respondents: 78,001.

Average Number of Responses per Respondent: The number of responses is estimated to be 4 responses per respondent per year.

Total Annual Responses: 312,004.

Average Time per Response: 1.219 hours.

Estimated Total Annual Burden on Respondents: The recordkeeping burden hours is estimated at *27,268,* and the reporting burden hours is estimated at *353,116,* for an estimated total annual burden of *380,384* hours.

Dated: January 21, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 03–1754 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coronado National Forest, Arizona; Alpha Calcit Marble Mine

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service accepted a Plan of Operations from Alpha Calcit Arizona, Limited, for mining and road construction in the Dragoon Mountain Range of the Coronado National Forest in southern Arizona, as required by the1872 Mining Law, as amended, and its implementing regulations at 36 CFR part 228. The proposed mine expansion is located within an inventoried roadless area.

DATES: Comments concerning the scope of the analysis should be received by April 30, 2003. The draft environmental impact statement is expected by December, 2003. The final environmental impact statement is expected in March, 2004.

ADDRESSES: Send written comments to Jennifer Ruyle, Alpha Calcit Environmental Analysis Team Leader; Coronado National Forest; Federal Building, FB–42; 300 West Congress, Tucson, Arizona, 85701.

Send electronic mail comments to *jruyle@fs.fed.us,* Alpha Calcit Environmental Analysis Team Leader.

FOR FURTHER INFORMATION CONTACT: John McGee, Forest Supervisor, Coronado National Forest, USDA Forest Service or Jennifer Ruyle, Analysis Team Leader, Coronado National Forest, USDA Forest Service at the above address.

SUPPLEMENTARY INFORMATION:

Alpha Calcit Arizona, Limited, is seeking approval for a Plan of Operations to expand an existing marble

mine in the Dragoon Mountain Range of the Coronado National Forest in southern Arizona. The proposed mine expansion is located in an inventoried roadless area as defined in the Forest Service Roadless Area Conservation Final Environmental Impact Statement, November 2000. *See* page 14 of EIS Volume 2—Maps of Inventoried Roadless Areas, Coronado National Forest Inventoried Roadless Areas. This Forest Roadless Area map is also found on the web at *http://roadless.fs.fed.us/states/az/coro.pdf.* The proposal includes the construction of approximately ½ mile of new road in the inventoried roadless area, and reconstruction (widening) of existing access roads thereby making it subject to regulations at 36 CFR 294.12 and Interim Directive Forest Service Manual (FSM) 1925 policy. Paragraph (a) of the regulation prohibits new road construction or reconstruction in inventoried roadless areas while paragraph (b) provides exceptions to the prohibition. This proposal conforms to the requirements of exception (b)(3) in the regulations because the proposed road construction is needed pursuant to outstanding rights provided by statute (1872 Mining Law). This proposal also falls under similar exception language in FSM 1925.04 b (d).

Purpose and Need for Action

The purpose of this proposal is to make locatable mineral material available to Alpha Calcit Arizona, Limited, as provided by statute. The statutes authorizing this use of National Forest System lands and resources include the 1872 Mining Law, as amended, and its implementing regulations at 36 CFR part 228; the Federal Land Policy and Management Act of 1976, and Forest Service Policy as described in the Directives System (Forest Service Manual 2800).

The Forest Service accepted a Final Plan of Operations, as required by law, regulation and policy, from Alpha Calcit Arizona, Limited, for proposed mining of limestone, marble, and related products in the Dragoon Mountains of the Coronado National Forest. This action responds to the goals and objectives outlined in the Land and Resource Management Plan for the Coronado National Forest. It also contributes to meeting the goal of supporting environmentally sound minerals development and reclamation.

Proposed Action

The Proposed Action is to approve the Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble in the Tapia-Bliss claims in the Dragoon Mountain Range of the Coronado National Forest with mitigations for land and resource protection. The Final Plan of Operations accepted from Alpha Calcit Arizona, Limited, consists of:

- Expansion of an existing quarry for the purpose of mining marble, limestone, and related products from the Escabrosa limestone formation in the Dragoon Mountain Range of the Coronado National Forest,
- Mining 100,000 short tons (approximately 2,000 pounds per ton) of marble annually for a period of 20 years,
- Constructing a crushing facility on private land approximately 2,300 feet north of the center of the quarry area, in the NE ¼ of the NW ¼ of Section 33, T.17S., R.23E., (G&SRB&M),
- Employing blasting and the use of heavy equipment to move material from the quarry to the processing plant,
- Accessing the quarry area via County Road to the Forest boundary, and via Forest Road (FR) 689 from the boundary into the quarry area, and
- Constructing a new access road from the southeast end of the quarry to the top of the exposed face and top bench of the quarry in the SW ¼ of the SE ¼ of Section 33, T.17S., R.23E., (G&SRB&M).

This alternative includes modifications to mitigate effects. Mitigations include measures to address waste rock management, avoidance of significant archeological and historical sites, avoidance of impacts to resources and places important to tribes with traditional ties to the area, reclamation and revegetation, utility installation, protection of endangered, threatened, or sensitive flora or fauna, consideration of agave plants, water sources, hazardous material storage, and other best management practices.

Possible Alternatives

Alternative 1—No Action

The No Action Alternative would deny the Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble in the Tapia-Bliss claims in the Dragoon Mountain Range of the Coronado National Forest. Mining operations would not be implemented.

- The agency does not have discretion to deny statutory rights to mine locatable minerals subject to the 1872 Mining Law.
- The agency has discretion to deny the mining of common variety minerals, but it may be impractical to deny mining of common variety marble closely associated with locatable marble in the project area.

Alternative 2—The Proposed Action

Alternative 3

Approve the described Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble, without the mitigation measures listed previously.

Responsible Official

The Responsible Official is Harv Forsgren, Regional Forester. His address is Harv Forsgren, USDA Forest Service, Southwestern Region; 333 Broadway, Southeast; Albuquerque, New Mexico, 87102.

Nature of Decision To Be Made

Based on the results of the environmental analysis, the decision will address the following:

1. Whether or not the mining proposal would proceed as proposed or as modified by mitigation measures .
2. If mining activity is allowed, the mitigation measures and monitoring requirements that would be implemented.
3. Consistency with applicable laws, regulations, policies, and the Forest Plan.

Scoping Process

The Forest Service will be seeking information, comments and assistance from Tribal Governments, Federal, State and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Written comments will be solicited through a scoping report mailed to individuals and entities known to be interested or affected. This report will be mailed in March of 2003. Information about the proposal will also be available at a public open house to be held on March 11, 2003 from 3 PM to 8 PM, at the Benson Public Library, 300 S. Huachuca, Benson, AZ 85602.

Preliminary Issues

Analysis of the proposal, as submitted by the proponent, indicates that the following preliminary issues should be considered in the analysis. A final set of issues will be defined following scoping and consultation.

Heritage Resources

- Mining and support activities (access, construction of crushing facilities) may have adverse effects on archaeological and historical sites.
- The Dragoon Mountains are important in Chiracahua Apache history and culture; some Chiricahua Apaches retain traditional ties to the area. Mining activities may be incompatible with the historical and cultural associations.

Public Safety

• Truck traffic through an adjacent residential area, with mixed residential and truck traffic on Lizard Lane (access road) may pose a safety hazard.

• Mine traffic may conflict with cattle grazing along the access road.

Flora and Fauna

• Mining and associated activities may adversely affect populations or habitat of certain management indicator species.

• Mining and associated activities may adversely affect individuals, populations, or habitat of threatened, endangered, or sensitive species, including the Lesser long-nosed bat or American peregrine falcon.

Water Quantity and Quality

• Waters running in or around the mine and along the access road may adversely affect adjacent landowners and other Forest users.

• Lack of a water storage or filtration plant may adversely affect adjacent landowners and other Forest users.

• Potential dust mitigation (watering) may reduce local water supplies.

Access

• Proposed access may not be wide enough to allow haul vehicles to pass.

• Traffic conflicts may become acute during hunting season.

• Resolution of safety issues may result in restrictions on access by general Forest users.

Visual Quality

• Appearance of the mine face and roads may be incompatible with scenic qualities of the landscape.

Air Quality

• Mining activities (blasting, crushing, or use and maintenance of access roads) may increase dust.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 13, 2003.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 03–1693 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, February 10, 2003. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located at 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 196 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Update on SRA Management Plan appeal;

Process for recruitment and appointment of replacement Council members;

Review of Draft Information Strategy Plan for implementing new use rules.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the February 10 meeting by sending them to Designated Federal Official Rodney Stewart at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Rodney Stewart; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: January 17, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–1721 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Jordan Road Shooting Range, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with the City of Sedona (the Settling Party) concerning the Jordan Road Shooting Range, Coconino County, Arizona. The settlement requires the Settling Party to pay $17,000 to the USDA Forest Service, Southwestern Region, pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). The settlement includes a covenant not to sue the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Red Rock Ranger District, PO Box 300, 250 Brewer Road, Sedona, AZ 86339–0330, and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102.

DATES: Comments must be submitted on or before February 26, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the Red Rock Ranger District, PO Box 300, 250 Brewer Road, Sedona, AZ 86339–0330 and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102. A copy of the proposed settlement may be obtained from Ken Anderson on the Red Rock Ranger District at 928–203–7501 (direct) or 928–282–4119 (backup), or from Kirk M. Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Jordan Road Shooting Range, Coconino County, Arizona, and should be addressed to Kirk M. Minckler, USDA Office of the General Counsel, PO Box 25005, Denver, CO 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Maria McGaha, USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102, phone (505) 842–3837. For legal information, contact Kirk M. Minckler, USDA Office of the General Counsel, PO Box 25005, Denver, CO 80225–0005; phone (303) 275–5549.

Dated: January 17, 2003.

Harv Forsgren,

Regional Forester, USDA Forest Service, Southwestern Region.

[FR Doc. 03–1692 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration.

Title: Application for Commission in the NOAA Officer Corps.

Form Number(s): NOAA Form 56–42, 56–42A, 56–42C, and 56–42D.

OMB Approval Number: 0648–0047.

Type of Request: Regular submission.

Burden Hours: 184.

Number of Respondents: 600.

Average Hours Per Response: 1 hour for an application; and 10 minutes for a reference.

Needs and Uses: The NOAA Corps is the smallest of the seven uniformed services of the United States and is an integral part of NOAA. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve in assignments within the five major Line Offices of NOAA. Persons wishing to obtain a NOAA Corps Commission must submit an application package, including an eye test and five references.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1788 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

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

SUMMARY: The Department of Commerce (''the Department'') has revised the agreement suspending the antidumping duty investigation involving certain cut-to-length carbon steel plate (''CTL steel plate'') from the Russian Federation (''Russia''). The basis for this action is an agreement between the Department and the Russian CTL steel plate producers accounting for substantially all imports of CTL steel plate from Russia, wherein each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Kemp, Stephen Bailey or Lilit Astvatsatrian, at (202) 482–4037, (202) 482–1102, and (202) 482–6412, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation entered into an agreement (62 FR 61780, November 19, 1997) suspending the antidumping investigation on CTL steel plate from the Russian Federation. Upon request of petitioners, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value.[1] Likewise, the International Trade Commission continued its investigation and made an affirmative determination as to material injury to an industry in the United States.[2] On June 6, 2002, based on the evidence on Russian economic reforms to that date, the Department revoked Russia's status as a non-market economy country under section 771(18)(B) of the Act. On November 21, 2002, representatives from JSC Severstal, JSC Magnitogorsk Iron and Steel Works and JSC NOSTA (OKIW) Integrated Iron-Steel Works (collectively the ''Russian CTL steel plate producers'') initialed a proposed, revised suspension agreement. We invited comments on the proposed agreement. On December 11, 2002, we received comments from petitioners, Bethlehem Steel Corporation and United States Steel Corporation.

On December 20, 2002, the final suspension agreement was signed by the Russian CTL steel plate producers and the Department, the effective date being January 23, 2003.

Scope of Investigation

For a complete description of the scope of the investigation, *see Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, Appendix B, signed December 20, 2002, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. Based on our review of these comments, we have made one change to the proposed agreement which was correcting the effective date of the agreement from January 23, 2002 to January 23, 2003. In accordance with section 734(b) of the Act, we have determined that the agreement will eliminate completely sales at less than fair value of imported subject merchandise. Moreover, in accordance with section 734(d) of the Act, we have determined that the agreement is in the public interest, and that the agreement can be monitored effectively. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement, signed December 20, 2002, are set forth in Appendix I to this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: January 17, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From the Russian Federation (A–821–808)

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(c)(b)) (the ''Act''), and 19 CFR 351.208 (the ''Regulations''), the U.S. Department of Commerce (the ''Department'') and the signatory producers/exporters of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation (the ''Signatories'') enter into this suspension agreement (the ''Agreement''). As of the Effective Date, this Agreement supercedes the suspension agreement entered into by the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation on October 24, 1997. By agreement of the Parties, the October 24, 1997 suspension agreement shall cease to have force or effect as of the Effective Date of this Agreement. On the basis of this Agreement, the Department shall continue to suspend its antidumping investigation which it completed on November 19, 1997 (62 FR 61787), with respect to certain cut-to-length carbon steel plate from the Russian Federation, subject to the terms and provisions set forth below.

(A) Product Coverage

For purposes of this Agreement, the products covered are certain cut-to-length carbon steel plate, as described in Appendix B.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Russian Federation that, during the most recently completed calendar year, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at anytime during the period of the Agreement require additional producers/exporters in the Russian Federation to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For the period from January 23, 2003, the effective date of this agreement, through September 30, 2003 (the interim period), each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement in the United States.

(2) For the first sales period only, October 1, 2003 through December 31, 2003, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to the parties not later than September 20, 2003.

(3) For all sales occurring on and after January 1, 2004, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unaffiliated purchaser in the

[1] *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61794, Nov. 19, 1997.

[2] *See* Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine, 62 FR 66128, Dec. 17, 1997.

United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to the parties not later than December 20 and June 20 of each year.[3] This NV shall apply to sales occurring during the semiannual period beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than January 31, 2004, and shall contain the specified sales information covering the period October 1, 2003 to December 31, 2003. Subsequent reports of sales data shall be submitted to the Department not later than July 31 and January 31 of each year, and each report shall contain the specified sales information for the semiannual period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than a semiannual basis.

(2) Cost Information

Producer/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on a semiannual basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix A, profit will be reported by the producers/exporters on a semiannual basis. Each such producer/exporter also must report anticipated increases in production costs in the semiannual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than May 15, 2003, and shall contain the specified cost data covering the period January 1, 2003 through March 31, 2003. The second report of cost data shall be submitted to the Department not later than August 14, 2003, and shall contain the specified cost data covering the period January 1, 2003 through June 30, 2003. Each subsequent report shall be submitted to the Department not later than February 14 and August 14 of each year, and each report shall contain the specified information for the semiannual period ending 45 days prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous semiannual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under section F of this Agreement.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that section F of this Agreement applies.

[3] For the first sales period only, October 1, 2003 through December 31, 2003, the issuance of the normal value may be delayed in order to resolve issues raised in comments from interested parties or by the Department and for the purpose of allowing sufficient time for signatories to respond to the Department's request for cost data. Some of these issues may arise due to Russia's new status as a market economy with respect to the Department's proceedings. In accordance with section 773(f) of the Act, the Department will examine prices and costs within Russia and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barters, as well as items that are not recognized by the Russian Accounting System.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as results of its analysis under section 777 of the Act.

(2) For the first sales period, beginning October 1, 2003, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV no later than August 20, 2003. At that time, the Department may also make available such information to the domestic parties to the proceeding in accordance with this section.

(3) Not later than November 20 and May 20 of each ensuing sales period, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(4) Not later than 7 days after the date of disclosure under section E(2) and E(3) of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in section C(2) of this Agreement. In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal

The Department will not consider requests for termination of this suspended investigation prior to January 2008. Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.222 of the Department's regulations.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. price means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) Normal Value means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix A to this Agreement.

(3) Producer/Exporter means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) Date of sale means the date of the invoice as recorded in the exporter or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is January 23, 2003.

For the Russian Federation Producers/Exporters: Andrey V. Shikhanovich for JSC Severstal; Date: December 20, 2002. Andrey V. Shikhanovich for JSC Magnitogorsk, Iron and Steel Works (MMK); Date: December 20, 2002. Dmitry V. Tarasov for JSC NOSTA (OKIW), Integrated Iron-Steel Works; Date: December 20, 2002.

For U.S. Department of Commerce: Faryar Shirzad, Assistant Secretary for Import Administration; Date: December 20, 2002.

Appendix A—Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be [4]:

- Comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards that can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a semiannual weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials is the cost of those materials which are input into the production process and physically become part of the final product.

Direct labor are the costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead is the overhead costs including indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line. Acceptable cost allocation can be based on labor hours or machine hours. Overhead costs should reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

COP is equal to the sum of materials, labor, and overhead (COM) plus SG&A expense in the home market (HM).

SG&A expense are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the

[4] *See* footnote 1 in Section C(2) of the Agreement.

product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sales is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

Commission expenses are payments to unaffiliated parties for sales in the HM.

Credit expenses are expenses incurred for the extension of credit to HM customers.

Movement expenses are freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses are the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses are additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

FOR EP TRANSACTIONS

+	Direct Materials
+	Direct Labor
+	Factory Overhead
=	Cost of Manufacturing (COM)
+	Home Market SG&A
=	Cost of Production (COP)
+	U.S. Packing
+	Profit
=	Constructed Value
+	U.S. Direct-Selling Expense
+	U.S. Commission Expense
+	U.S. Movement Expense
+	U.S. Credit Expense
–	HM Direct-Selling Expense
–	HM Commission Expense [1]
–	HM Credit Expense
=	NV for EP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

FOR CEP TRANSACTIONS

+	Direct Materials
+	Direct Labor
+	Factory Overhead
=	Cost of Manufacturing (COM)
+	Home Market SG&A
=	Cost of Production (COP)
+	U.S. Packing
+	Profit
=	Constructed Value
+	U.S. Direct-Selling Expense
+	U.S. Indirect-selling Expense
+	U.S. Commission Expense
+	U.S. Movement Expense
+	U.S. Credit Expense
+	U.S. Further Manufacturing Expenses (if any)
+	CEP Profit
–	HM Direct-Selling Expense
–	HM Commission Expense [1]
–	HM Credit Expense
=	NV for CEP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

Appendix B

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

[FR Doc. 03–1782 Filed 1–24–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012203A]

Proposed Information Collection; Comment Request; Northeast Region Vessel Monitoring and Communications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before March 28, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument and instructions should be directed to Hannah Goodale at 508–281–9101, or to *Hannah.F.Goodale@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Owners or operators of vessels that have caught 500 metric tons of herring in the past year, or intend to catch 500 metric tons in the current year, must equip their vessels with an approved Vessel Monitoring System (VMS). The VMS units automatically report the vessel's position at least once per hour when the vessel is underway. Vessel owners must submit proof that the VMS has been installed. Herring carriers may be exempted from this requirement by obtaining a letter of authorization from NOAA.

II. Method of Collection

Position reports are automated and automatic. Proof of installation is mailed to NOAA. A letter of authorization can be requested by phone.

III. Data

OMB Number: 0648–0404.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 150.

Estimated Time Per Response: 1 hour to install a VMS; 2 minutes for submission of proof of installation; 5 seconds for an automated position report from the VMS or transponder system (10 minutes if an Inmarsat communication unit is used to transmit the data); and 2 minutes for a request for a letter of authorization exemption.

Estimated Total Annual Burden Hours: 816.

Estimated Total Annual Cost to Public: $298,000.

IV. Request for Comments

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 (including hours and cost) 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.

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.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1787 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030121015–3015–01; I.D. 120602C]

RIN 0648–AQ66

Mid-Atlantic Fishery Management Council (Council); Request for Research Proposals (RFP)

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

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS announces that, for fishing year 2004, up to 3 percent of the total allowable landings (TAL) will be dedicated to research endeavors under a research set-aside (RSA) program. This notice describes how the application and selection process will operate for research projects funded under the RSA by a set-aside from the TAL of selected species. The RSA provides a mechanism to fund research and compensate vessels through the sale of fish harvested under the research quota. The setting of the actual research set-aside quotas will be the subject of future rulemaking. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, bluefish, and tilefish fisheries.

DATES: All research proposals to be considered under this solicitation must be received between January 27, 2003, and 5 p.m., EST, on March 28, 2003, in the Northeast Regional Office (see **ADDRESSES**). Postmarks prior to the end of the receipt period will not be sufficient. Facsimile applications will not be accepted. For further information related to the timeframe for review and selection of proposals to be conducted with research quota set-asides, see Section A, Background, under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark proposals ''Attention—Mid-Atlantic Research Proposals.'' Copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.ofa.noaa.gov/grants*, under the title ''Grant Application Forms and Budget Guidelines,'' or by contacting NMFS (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, (302) 674–2331, fax (302) 674–5399, e-mail *cheaton@mafmc.org*, or Paul Perra, Fishery Policy Analyst, NMFS, (978) 281–9153, fax 978–281–9135, e-mail *paul.perra@noaa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The award of a set-aside from the TAL of selected species became possible with the approval of Framework Adjustment 1 (Framework 1) to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish Fishery Management Plans (FMPs); and the RSA provisions of the Tilefish FMP. Framework 1 was approved by the Secretary of Commerce on August 10, 2001. It established a procedure through which research set-aside amounts would be set annually as part of the Mid-Atlantic Fishery Management Council's (Council) quota-setting process. The set-asides may range between 0 and 3 percent of each species' TAL. The set-aside allocated for a given species is to be utilized primarily for research involving that species. However, to promote research in those cases where it would otherwise be infeasible, individual research projects may involve allocations from the set-asides for several of the species listed in this notice. Therefore, in addition to, or in lieu of, applying for part of the set-aside involving a species directly involved in a research project, applicants may also apply for up to 25 percent of the research set-aside quota for species not directly involved in a particular research project.

To be eligible for consideration, a research proposal for work to be conducted using a research set-aside allocation for the 2004 fishing year must be received during the application period identified in the DATES section

of this document. Applicants must submit one signed original and two signed copies of the completed application (including supporting information). Prior to selection, NOAA will convene a panel to review proposals submitted in response to this RFP.

The Council, in consultation with the Atlantic States Marine Fisheries Commission (Commission), will incorporate the level of research set-aside (amounts or percentages) for each of the set-aside species for the 2004 fishing year into the Council's recommendations for annual quota specifications. NMFS will consider the recommended level of set-aside as part of the associated rulemaking process. It is anticipated that most proposals will request that vessels conducting research be exempt from certain regulations for the relevant fishery. The impacts of such an exemption must be analyzed. To streamline the process for the review and approval of exempted fishing permit (EFP) applications, the Council will prepare, as appropriate, an analysis of the impacts associated with the anticipated exemptions during the annual quota specification process. This process is intended to satisfy the analytical and public notice provisions of the EFP regulations at 50 CFR 600.745. However, certain conditions may require the applicant to provide additional analysis associated with such exemptions (see section N of this notice).

The actual level of research set-aside quota available to applicants for the 2004 fishing year will depend on the TAL level specified by the Council at its quota-setting meetings in June and August 2003, and on the percentage (0 to 3 percent) of the TAL recommended by the Council and approved by NMFS as the level of research set-aside available for 2004. To help researchers develop proposals for the 2004 fishing year, the table below provides some guidance on the general magnitude of research set-asides and estimated values that a researcher might expect to be available for fishing year 2004. The table is based on TAL levels for these fisheries for the 2003 fishing year, and assumes that NMFS would approve the maximum set-aside level of 3 percent of the TAL, if requested. The table is intended only as a guide, to be used when developing research proposals for the 2004 fishing year; it does not necessarily reflect the actual RSA quota that will be allocated for fishing year 2004. Based on Council recommendation, NMFS could choose to adopt less than 3 percent of TAL as a set-aside, or could decide not to adopt any set-aside for a given fishery. The estimated values of the set-aside allocations will vary depending on market considerations prevailing at the time the research trips are conducted. In October 2002, the Council voted to set the research set-aside for tilefish at zero until after a stock assessment is complete. However, tilefish RSA projects could be considered upon completion of a stock assessment and/or through utilizing of RSA quota from other species.

TABLE 1. EXAMPLE OF 3–PERCENT RESEARCH SET-ASIDE, USING 2003 SPECIFICATIONS.

Allocation Species	Pounds (000 lb)	Kilograms (000 kg)	Estimated Value ($000)
Summer Flounder	699	317	1,005,
Scup	480	218	403
Black Sea Bass	204	93	318
Loligo Squid	1,125	510	743
Illex Squid	1,587	720	349
Atlantic Mackerel	11,571	5,249	926
Butterfish	390	177	129
Bluefish	1,191	540	358
Tilefish	0	0	0

B. Authority

Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881c(c), respectively.

C. Catalog of Federal Domestic Assistance (CFDA)

11.454, Unallied Management Projects

D. Funding Instrument and Project Period

In consultation with NMFS, the NOAA Grants Office will award a grant to successful applicants through the NOAA grant award process. The RSA harvest timeframe must fall within January 1 through December 31, 2004. There may be times when compensation (in terms of the timing in harvest of the RSA) is not concurrent with the timing of the research. In general, under such situations, no more than 50 percent of the requested RSA should be harvested prior to the conduct of research activities. Proposals requesting RSA harvest prior to or after that timeframe will not be considered.

E. Funding Availability

No Federal funds are provided for research under this notification. The Federal Government may issue an EFP or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. Any funds generated from the landings authorized under a RSA grant shall be used to cover the cost of the research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land a species in excess of a trip limit or seasonal quota must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel.

Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Research

Projects funded under a RSA must enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made. Research, as well as additional voyages to obtain fish for compensation, may be conducted, as specified in the EFP or LOA, as applicable, in or outside of a closed area, within the timeframe of a commercial quota closure, and onboard

a fishing or other type of vessel, including recreational and/or commercial vessels.

Funds generated from the RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of the set-aside species. For example, the funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists), or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner, should the sale of the excess catch not fully reimburse the researcher or vessel owner for his/her expenses.

G. Eligibility Criteria

All commercial organizations; non-profit organizations; state, local, or tribal governments; institutions of higher education; and individuals are eligible to apply, provided that all proposal requirements are satisfied, and the proposal is received by the date specified in this document.

A person is not eligible to submit an application under this program if he/she is an employee of any Federal agency or a Regional Fishery Management Council. However, Council members who are not Federal employees may submit an application.

H. Proposal Preparation and Requirements

NOAA employees (whether full-time, part-time, or intermittent) are not permitted to assist in the preparation of an application, except that staff may provide information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for a proposal. However, the Council or NMFS contact person (see **FOR FURTHER INFORMATION CONTACT**) may provide assistance to researchers who are seeking vessels to participate in the collection of set-aside species or directly in research projects. NMFS, in consultation with the Council, may decide to hold a meeting with the public to discuss general topics concerning past RSA program accomplishments and ways to enhance communications on funding priorities and associated potential study methods. Such meetings will be publicized by NMFS through a **Federal Register** notice, and through the public mailing list maintained by the Council office (see **FOR FURTHER CONTACT INFORMATION CONTACT**).

Proposals must identify the research to be conducted and the total amount of the set-aside species requested for the project, including its approximate cash value. If a waiver of Federal regulations is proposed, a list of the specific regulations to be waived and a brief justification for each regulation to be waived must be included with the proposal.

In addition, each proposal must identify the RSA harvesting activities for the participating vessel(s) that would make a trip to collect the set-aside species. The vessel(s) selected by the applicant must be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. Proposals may request that the quota set-aside be collected separately from the research trips. The separate compensation trips do not necessarily have to be conducted by the same vessel. In general, compensation (in terms of the value of fish landed) should not exceed 2.5 times the cost of the associated research (See Evaluation Criterion 2 in Section J.).

The researcher's proposal must state the amount of funds required to support the research project, including any costs for participation by project scientists or consultants, as well as the amount required to compensate the vessel owner either for the collection of set-aside species, or for participation in the research project, or both. The proposal should also include the agreement between the applicant and participating vessel operators that shows exactly how the research activity is to be paid for, if possible, or such agreement must be provided prior to final approval by NOAA.

I. Project Funding Priorities

The Council and NOAA will give priority to funding research proposals in the following areas identified as research priorities by the Council and Commission for the 2004 fishing year (not listed in order of priority):

1. Bycatch and discard reduction concerning: (a) distinctions between regulatory discards and bycatch attributed to gear, including mesh selectivity and/or overall gear design in the summer flounder fishery; (b) gear modifications in the Loligo squid fishery to reduce scup and other species bycatch; (c) discard studies in the Loligo and scup fisheries; (d) better estimates of recreational discards in the summer flounder, scup, black sea bass, and bluefish fisheries; or (e) ways to decrease discards associated with increases in size limits.

2. Mesh and gear selectivity focusing on: (a) the examination of summer flounder catch composition in small-mesh net fisheries within the summer flounder small-mesh exemption area; (b) summer flounder mesh selectivity studies; (c) scup mesh selectivity; (d) squid mesh selectivity; (e) black sea bass mesh selectivity; (f) the development of threshold triggers based on gear and fishery characteristics; (g) evaluation of various pot vent sizes and shapes for black sea bass and scup; (h) estimation of mortality of black sea bass left in pots during the closed season; and (i) mesh retention studies of 2 1/2–inch (6.35–cm), 2 3/4–inch (6.99–cm), and 3–inch (7.63–cm) mesh for butterfish.

3. Fishing impacts on habitat pertaining to: (a) mobile gear impacts on tilefish burrows; (b) scup spawning areas and scup larval settlement areas in coastal/estuarine waters; (c) benthic habitat of juvenile and adult black sea bass, and scup offshore wintering areas; (d) mapping of spawning areas and egg mop areas for Loligo squid; and (e) further delineation of essential fish habitat (EFH), particularly in nursery areas for summer flounder, scup, and black sea bass, as well as the potential for possible gear impacts to this EFH.

4. Cooperative stock assessment surveys focusing on: (a) the use of alternative industry assessment methods to determine abundance of Atlantic mackerel; (b) the summer flounder fishery; (c) surveys for summer flounder in areas not traditionally sampled by NMFS Northeast Fisheries Science Center (NEFSC) gear; (d) side-by-side comparisons for summer flounder and scup of commercial and NEFSC survey gear; (e) better survey information for bluefish; (f) tagging studies of bluefish movements; and (g) DNA analysis for stock descriptions of Atlantic bluefish and Atlantic mackerel.

5. Improved recreational fishery data focusing on: (a) research to enhance the overall knowledge of the recreational fishery; (b) statistical models to evaluate the effectiveness of recreational management measures and/or data collection process; (c) studies of bluefish, summer flounder, scup, and black sea bass hooking mortality by size of fish and the compliance with the regulations for these species; and (d) tagging studies with break-away hooks for movement of tilefish.

6. Other: (a) an evaluation of redirection of fishing effort with area closures for black sea bass; (b) an evaluation of whether artificial reefs increase the productivity of black sea bass or simply concentrate the resource; (c) an evaluation of the mixing of Illex and Loligo squid in September and

October; (d) increased and more representative sea sampling of the various fisheries in which summer flounder, scup, and black sea bass are caught (needed to adequately characterize the length composition of the discards); (e) better estimates of discard mortality for the recreational and commercial fisheries (by gear type) for each species of Council-managed fish; (f) a study of summer flounder fecundity and why recruitment appears low as the resource is being rebuilt; (g) a study to develop optimum sampling levels to estimate discards of summer flounder, scup, and black sea bass; (h) increased and more representative port sampling of the various fisheries in which summer flounder, scup, and black sea bass are caught; (i) development of fishery independent surveys and expansion of existing surveys to capture all sizes and age classes of summer flounder, scup, and black sea bass in order to develop independent catch-at-age and catch per unit effort data; (j) expansion of age sampling of summer flounder, scup, and black sea bass from commercial and recreational catches, with special emphasis on collection of large specimens; (k) quantification of the percentage of commercial fishery trips that had discards but no landings, and evaluation of how such trips contribute to the total commercial fishery discard estimate; and (l) evaluation of fishery management actions, e.g., do closures have a net positive effect on fishing mortality by postponing such mortality, or do they simply allow for concentration of resources such that when the seasons open the consequent fishing effort offsets the mortality reductions that occurred during the closure?

J. Evaluation Criteria

The review panel convened by NOAA to evaluate proposals submitted in response to this RFP (see section L of this notice), will evaluate proposals by assigning scores up to the maximum indicated for each of the following criteria:

1. A clear definition of the problem, need, issue or hypothesis to be addressed. The proposal should describe its relevance to RSA program priorities. If not directly related to priorities listed in this solicitation, provide justification why the proposed project should be considered. (25 points)

2. Cost-effectiveness of the project. The requested value of the anticipated revenue from the RSA should be commensurate with estimated project costs, and generally should not exceed 2.5 times the cost of the associated research. Economic and budget projections should be quantified, to the extent possible. Where appropriate, use of existing equipment (fishing gear) is preferred versus acquisition of new equipment. (25 points)

3. Special emphasis will be given to proposals that foster and improve cooperative interactions with NMFS. A clear definition of the approach to be used, including description of field work, theoretical studies, and laboratory analysis to support the proposed research, and the ability of the applicant to physically complete RSA harvest during the 2004 calendar year in the area and time proposed is important. The time frame for harvesting the RSA catch and conducting the proposed research should be clearly specified. Activities that take place over a wider versus narrower geographical range, where appropriate, are preferred. (25 points)

4. Demonstration of support, cooperation and/or collaboration with the fishing industry, and qualifications/experience of project participants. Where appropriate, unified versus separate stand-alone proposals on related projects involving multiple principal investigators are preferred. (15 points)

5. Identification of anticipated benefits, potential users, likelihood of success, and methods of disseminating results. Where appropriate, data generated from the research must be formatted in a manner consistent with NMFS' and Atlantic Coastal Cooperative Statistical Program's (ACCSP) databases. A copy of this format is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**). (10 points)

K. Selection Procedures

NOAA will solicit written technical evaluations from the Council members who make up the Research Set-Aside Committee (Committee) and from three or more appropriate private and public sector experts to score proposals using the criteria specified in section J of this notification to determine the technical merit of the proposal. Following completion of the technical evaluation, NOAA will convene a review panel, including the Committee and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify study methodology as a condition of project approval. No consensus recommendations will be made. Based on the results of the technical review's comments and scores, comments provided by the review panel, and the following program policy factors, NOAA will select the successful proposals and inform the Council of its recommendations. The program policy factors are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the experimental fishery requirements discussed under section N of this notice; and (3) redundancy of research projects. Therefore, the highest scoring projects may not necessarily be selected for an award. Subsequent approval by the NOAA Grants Officer will allow NMFS, as applicable, to exempt selected vessel(s) from specific regulations implementing the respective FMPs through written notification to the applicant.

For proposals that request exemptions from existing regulations (e.g., possession limits, closed seasons), the impacts of the proposed exemptions must be analyzed. The Council will analyze these impacts as part of the impacts of the proposed specifications for the upcoming fishing year in the annual quota specification packages it submits to NMFS. However, those individuals with proposals that include vessel activities that extend beyond the scope of the analysis provided by the Council may be required to provide additional analysis before issuance of an EFP (see section N). Any applicants who request regulatory exemptions that are beyond the scope of the Council analysis may be required to adhere to the regulations that govern the issuance of an EFP by NMFS (see section N). If necessary, and as appropriate, NMFS will consult with the Council and successful applicants to secure the information required for granting an exemption, if issuance of an EFP is necessary for the research to be conducted. The final decision on the applicant's proposal for research quota will not be made by NOAA until NMFS advises that the applicant's EFP request is approved.

L. Proposal Format

Proposals should be limited to seven pages, excluding item 6 below. The format may vary, but must include:

1. A project summary.

2. A narrative project description to include: (a) project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the Council; (c) a statement of work (project design and management, including who is responsible, expected products, and participants other than applicant); and (d) a summary of the existing state of

knowledge related to the project and contribution and relevance of the proposed work.

3. A description of all funding sources (including revenues derived from the sale of the species harvested under the research quota set-aside) and funding needs. This element of the proposal must include the amount of research quota set-aside, in pounds, requested for each species and the expected funds to be generated by the sale of those species, as well as the expected funds to be allocated to the researcher and any involved fishing vessel.

4. A budget that includes a breakdown of research costs, including, labor, vessel, permit, equipment, supplies, and overhead, as applicable. Applicants must submit a Standard Form 424 (Application for Federal Assistance), including a detailed budget using Standard Form 424A, (Budget Information-- Non-Construction Programs), Standard Form 424B (Assurances - Non-Construction Programs), Commerce Department Form CD–511, (Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying), and if applicable, Standard Form SF-LLL (Disclosure of Lobbying Activities). Copies of these Standard Forms may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/grants.*

5. A list of any Federal or state regulations that the applicant needs to have waived and a brief justification for such a waiver. Applicants are urged to discuss with state fisheries agencies any proposed landings in their state(s). Note that requests for waivers of any state regulations will be forwarded to the appropriate state agency(s). NOAA cannot guarantee that state agencies will accede to any particular request.

6. Supporting documents, including resumes, letters of intent for vessels to participate in research activities, and any relevant contracts.

M. Final Reports and Data Submission

NOAA will require project researchers to submit to NOAA, with a copy for the Council, semi-annual progress reports and a final completion report describing their research project results, and other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the report may vary, but must contain:

1. A brief summary of the completion report (200–word or less abstract);

2. A description of the issue/problem that was addressed;

3. A detailed description of methods of data collection and analyses;

4. A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience. This should include benefits and/or contributions to management decision-making.

5. A list of entities, firms, or organizations that actually performed the work and a description of how the work was accomplished; and

6. A detailed final accounting of all funds used to conduct research, including generation of project income resulting from sale of research set-aside quota. The financial information must be submitted on Office of Management and Budget (OMB) Standard Form–269 (Financial Status Report). Copies of this Standard Form may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/grants.* Projects designed to collect new data for inclusion in NMFS or ACCSP databases must submit the data in electronic format with appropriate documentation. Certain databases will have highly specific requirements as to required fields and content. Applicants must agree to provide newly collected data in a format acceptable to the administrators of the receiving databases.

N. Other Requirements

The Council staff will bear the primary responsibility for the evaluations of impacts associated with the proposed research, including analysis of any requested regulatory waivers. However, applicants proposing research and/or compensation fishing that goes beyond the scope of analysis provided by the Council staff in the Council's annual specification packages may be required to submit all information necessary for a Supplemental Environmental Assessment to obtain an EFP from NMFS. Should an applicant be required to submit a request for an EFP to NMFS, such submission should be received by NMFS at least 60 days before the requested start date of the proposed research to allow for additional review and analysis. A final decision on the applicant's grant request for research quota will not be made until NMFS has approved the applicant's EFP request.

If any part of the proposed research activities occur in state waters, successful applicants, as a condition of project approval, will be required to provide NMFS with a copy of written documentation to demonstrate that the applicant has contacted the concerned state fishery management agency or agencies for any required state authorization. Also, successful applicants will be required to provide NMFS with a copy of written documentation to demonstrate that the applicant has contacted the concerned state(s) fishery management agency or agencies with respect to the need for any required state authorization(s) for any planned commercial landings. Information on identity of state fishery management agencies is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

O. Other Requirements of Recipients

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

P. Disposition of Unsuccessful Applications

If an application is not selected, NOAA will return the proposal and related documents to the applicant.

Q. Other

DOC/NOAA supports cultural and gender diversity in our programs and encourages women and minority individuals and groups to submit applications.

DOC/NOAA encourages applications from members of the fishing community, and applications that involve fishing community cooperation and participation.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 553, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Applications under this program are subject to the provisions of Executive Order ''Intergovernmental Review of Federal Programs.''

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 269, 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0039, 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a

collection of information subject to the PRA, unless that collection displays a currently valid OMB control number.

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

Dated: January 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

[FR Doc. 03–1781 Filed 1–22–03; 4:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: On December 27, 2002, the Department of Defense published a notice concerning the committee meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)(67 FR 79063). The Deputy Secretary of Defense will make remarks on January 17, 2002 at 4:15. All other information remains unchanged.

Dated: January 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1694 Filed 1–24–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Battlefield Medical Information System-Telemedicine

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/381,058 entitled ''Battlefield Medical Information System-Telemedicine (BMIST),'' filed May 15, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The BMIST is a point-of-care First Responder Medic digital medical record, diagnostic tool that allows input, storage and provides preliminary assessment and output of medical information at the point of care.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1763 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Digital Healthcare Documentation System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/378,455 entitled ''Digital Healthcare Documentation System,'' filed May 6, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Forth Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The Digital Healthcare Documentation System (DHDS) is a multi-level computer-based patient record (CPR) that allows for the input, storage and output of healthcare information at various echelons of care. The system can be set up for use by one individual using a single computer or by a large medical treatment facility on a network.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1762 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 6,419,629 issued July 16, 2002 entitled ''Method for Predicting Human Cognitive Performance,'' to Precision Control Design, Inc. with its principal place of business at 135 Eglin Parkway S.E., Fort Walton Beach, FL 32548–5518.

DATES: File written objections by February 11, 2003.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1761 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 28, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 21, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

Frequency: Annually.

Affected Public:

Not-for-profit institutions (primary); State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4000; Burden Hours: 4000.

Abstract: EZ-Audit will support the electronic submission of financial statements and compliance audits as required by 34 CFR 668.23 for all institutions participating in the Title IV, FSA programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2217. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1716 Filed 1–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 19, 2003, 1 p.m.–8:30 p.m.

ADDRESSES: Office of Los Alamos Site Operations, 528 35th Street, Room 100, Los Alamos, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to order by Ted Taylor, DDFO; establishment of a quorum; welcome and introductions by Jim Brannon, Board Chair; approval of agenda; approval of Nov. 20th meeting minutes
1:15 p.m. Public comment
1:30 p.m. Board business
- A. Recruitment/membership update
- B. Report from Chairman Brannon
- C. Report from DOE, Ted Taylor, DDFO
- D. Report from Executive Director, Menice S. Manzanares
- E. New business

2:30 p.m. Break
2:45 p.m. Reports from committees
- A. Community Outreach Committee, Debra Walsh
- B. Monitoring and Surveillance Committee, Jim Brannon
- C. Environmental Restoration Committee, Dr. Fran Berting
- D. Waste Management Committee, Richard Gale
  1. TRU Waste Workshop Recommendation(s)
- E. Ad Hoc Committee on Recommendation Process (Don Jordan, Jim Brannon, and Dr. Berting)
- F. Ad Hoc Committee on Demographic Profile of Board (Dr. Ghosh and Debra Welsh)

4:30 p.m. Amendment to bylaws (first reading)
- A. Amendment adding to the ''Functions'' of the Board under section II, paragraph a, on page 1

5 p.m. Dinner break
6:15 p.m. Presentation by Ron Curry, Secretary of New Mexico Environment Department

6:45 p.m. Presentation by Dr. Paul Schumann, ''LANL's Public Involvement Plan''

7:30 p.m. Break

7:45 p.m. Public comment

8 p.m. Board comment

8:20 p.m. Recap of meeting

8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer (DDFO) is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued in Washington, DC on January 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–1741 Filed 1–24–03; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–20–001]

California Power Exchange Corporation; Notice of Filing

January 21, 2003.

Please take notice that on December 30, 2002, the Federal Energy Regulatory Commission (Commission) served on the California Power Exchange Corporation (CalPX) and the Official Committee of Participant Creditors of CalPX a Deficiency Letter in reference to the ''Request by the Official Committee of Participant Creditors of California Power Exchange Corporation for Approval of Funding and Governance as Provided in Confirmed Chapter 11 Plan, and for Expedited Consideration'' which is docketed as Docket No. EC03–20–000. On January 16, 2003, the CalPX filed with the Commission a letter by which CalPX seeks to clarify the transition from the current CalPX to the Reorganized CalPX.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. *Comment Date:* January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1724 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–20–001]

California Power Exchange Corporation; Notice of Filing

January 21, 2003.

Please take notice that on December 30, 2002, the Federal Energy Regulatory Commission (Commission) served on the California Power Exchange Corporation (CalPX) and the Official Committee of Participant Creditors of CalPX (the Committee) a Deficiency Letter in reference to ''Request by the Official Committee of Participant Creditors of California Power Exchange Corporation for Approval of Funding and Governance as Provided in Confirmed Chapter 11 Plan, and for Expedited Consideration'(the Request) which is docketed as No. EC03–20–000. On January 10, 2003, the Committee filed with the Commission its letter in response to the Deficiency Letter.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically

via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1725 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–383–003]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 1, 2002:

Second Substitute Sixth Revised Sheet No. 283
Substitute Original Sheet No. 283A

Columbia states that it made a filing with the Commission on July 2, 2002 to include a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit it, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects. The Commission approved the filing on July 31, 2002 (100 FERC ¶ 61,136 (2002)), subject to modifications. Columbia filed its first compliance filing in this docket on August 15, 2002, which modified tariff language consistent with the July 31 Order. The Commission issued an order on the compliance filing and rehearing on December 26, 2002 (101 FERC ¶ 61,380). In this order, the Commission accepted the August 15 filing, subject to further modification. Columbia asserts that the instant filing incorporates the required modifications.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1732 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–233–000]

Dauphin Island Gathering Partners; Notice of Tariff Filing

January 15, 2003.

Take notice that on January 10, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 203, to be effective February 9, 2003.

Dauphin Island states that this filing is submitted to remove the five-year limitation from the Right of First Refusal (ROFR) matching provisions in compliance with the Order on Remand issued October 31, 2002.

Dauphin Island states that copies of the filing are being served on all participants listed on the service list in this proceeding.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1734 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–008]

El Paso Natural Gas Company; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed in Appendices A and B to the filing with an effective date of November 1, 2002.

El Paso states that the tariff sheets are being filed in compliance with the Commission's December 26, 2002 order in this proceeding. Additionally, El Paso is filing pursuant to section 154.206 of the Commission's Regulations under the Natural Gas Act a motion to place into effect on November 1, 2002, the rates and tariff provisions accepted by the Commission's December 26 Order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1730 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–053]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report, November 2001–October 2002

January 15, 2003.

Take notice that on January 10, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, *et al.*

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 2001, through October 31, 2002, period, in accordance with article IV of the Settlement. Great Lakes states that such remittances, totaling $18,780, were made to Great Lakes' firm shippers as shown in the schedules included in the filing.

Great Lakes further states the amounts remitted are based on implementation of the Commission's orders in Docket Nos. RP91–143, RS92–63 and RP95–422, *et al.*

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment date: January 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1737 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–005]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2002.

Third Revised Sheet No. 8
First Revised Sheet No. 8B
Original Sheet No. 26
Sheet Nos. 27–29

Gulfstream states that the purpose of this filing is to comply with the Order on Rehearing and Compliance Filings issued by the Commission on December 26, 2002 in Docket Nos. RP02–361–001, *et al.* (December 26 Order). Gulfstream states that its Second Revised Sheet No. 8 and Original Sheet No. 8B contain a footnote which states that the negotiated rate agreements do not deviate in any material respect from the Form of Service Agreement contained in Gulfstream's Tariff.

Gulfstream also states that the December 26 Order required Gulfstream to identify in the footnotes on these tariff sheets certain of the negotiated rate agreements which are nonconforming service agreements. Gulfstream states that Third Revised Sheet No. 8 and First Revised Sheet No. 8B filed herewith both incorporate the revisions to the footnotes as required by the December 26 Order. In addition, the December 26 Order required Gulfstream to add a provision to its tariff that would provide for a meeting between Gulfstream and its customers once every two years to discuss operational issues, and Gulfstream states that it has provided for this on Original Sheet No. 26.

Gulfstream states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1731 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–231–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculations

January 15, 2003.

Take notice that on January 7, 2003, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2002 through December 31, 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 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1733 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–50–005]

KeySpan-Ravenswood, Inc. v. New York Independent System Operator; Notice of Filing

January 21, 2003.

Take notice that on January 17, 2003, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's December 18, 2002 letter order (101 FERC ¶ 61,296) in the above-captioned proceeding.

Con Edison states that the compliance filing would amend Con Edison's Open Access Transmission Tariff, FERC Electric Tariff Original Volume No. 1.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. *Comment Date:* February 7, 2003.

Magalie R. Salas, Secretary.

[FR Doc. 03–1726 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–41–000]

New York State Electric & Gas Corporation, Complainant, v. Niagara Mohawk Power Corporation, Respondent; Notice of Complaint

January 15, 2003.

Take notice that on January 14, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing a complaint alleging that the New York Independent System Operator, Inc. (NYISO) has failed to enforce the expiration date in Attachment L of the NYISO Open Access Transmission Tariff (OATT) with respect to grandfathering for a pre-NYISO transmission service agreement (TSA) between Niagara Mohawk Power Corporation (NMPC) and Allegheny Electric Cooperative, Inc. (AEC). NYSEG requests that the Federal Energy Regulatory Commission (Commission) issue an order that, among other things: (1) Requires the NYISO to provide to NYSEG the billing information needed by NYSEG to bill AEC (or its designated agent) for NYSEG's Transmission Service Charge (TSC) under the NYISO OATT commencing as of July 1, 2001; (2) requires AEC (or the party contractually obligated to pay NYISO OATT charges for AEC) to pay NYSEG's TSC under the NYISO OATT (plus interest) commencing as of July 1, 2001; and (3) to avoid double billing, directs NMPC to make all appropriate refunds to AEC (with interest) for transmission charges collected from AEC under the NMPC service agreement after its June 30, 2001 grandfathering expiration date.

NYSEG states that copies of the filing were served upon the NYISO, NMPC, AEC, and the New York Power Authority.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1818 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–235–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 2003.

Take notice that on January 13, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on February 13, 2003:

Tenth Revised Sheet No. 2
62 Revised Sheet No. 53
Sixth Revised Sheet No. 101
Third Revised Sheet No. 104
Fourth Revised Sheet No. 105
Third Revised Sheet No. 116
Second Revised Sheet No. 118
Fourth Revised Sheet No. 119
Second Revised Sheet No. 125C
First Revised Sheet No. 127
Sixth Revised Sheet No. 135
Sixth Revised Sheet No. 142
First Revised Sheet No. 161
Fourth Revised Sheet No. 200
Second Revised Sheet No. 442
Original Sheet No. 442A
Fourth Revised Sheet No. 446
Original Sheet No. 446A
Second Revised Sheet No. 447
Sheet No. 448
Sheet No. 461
Sheet No. 462 (deleted)
Second Revised Sheet No. 404
First Revised Sheet No. 405
Sheet No. 406
Sheet No. 412 (deleted)
Sheet No. 413 (deleted
Sheet No. 414 (deleted)
Sheet No. 415 (deleted)
Sheet No. 416 (deleted)
Sheet No. 424 (deleted)
Sheet No. 425 (deleted)
Fourth Revised Sheet No. 431
Original Sheet No. 431A
Fourth Revised Sheet No. 441
Original Sheet No. 441A
Second Revised Sheet No. 233
Fifth Revised Sheet No. 264
Third Revised Sheet No. 400
Original Sheet No. 400A
Fourth Revised Sheet No. 401
Second Revised Sheet No. 402
First Revised Sheet No. 403
Original Sheet No. 403A

Northern states that it is submitting the revised tariff sheets listed above to revise its generally applicable tariff provisions and its forms of service agreements to set forth provisions which could be agreed upon in transportation service agreements.

Northern further states that copies of the filing have been mailed to each of its 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1736 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–002]

Northwest Pipeline Corporation; Notice of Amendment

January 15, 2003.

Take notice that on January 8, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP02–4–002, an application, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations to amend the certificate of public convenience and necessity issued June 27, 2002, in Docket Nos. CP02–4–000 and –001, for Northwest's Evergreen Expansion project. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Northwest requests the Commission to approve: (1) Revised expansion facilities in the State of Washington at the Mt. Vernon, Willard and Roosevelt Compressor Stations, along with eliminating expansion work at the Chehalis Compressor Station which in aggregate will reduce the originally certificated compressor horsepower additions by 3,390 hp without impacting the originally certificated capacity additions; (2) addition of the Lake Tapps line lowering of approximately 270-foot segments of Northwest's existing mainline and mainline loop in Pierce County, Washington, in conjunction with the installation of the originally certificated Auburn Loop; (3) revised levelized, incremental 15-year and 25-year term transportation rates for the Evergreen Expansion shippers, along with an associated one-time revenue crediting provision; (4) a revised initial

incremental fuel rate for the Evergreen Expansion shippers, and related revised *pro forma* tariff provisions; (5) regulatory asset accounting treatment to allow deferred recovery of the depreciation and pretax return attributable to the completion of certain compression facilities three months prior to commencement of the incremental expansion service the facilities are being built to provide; and (6) an up-front determination that the new Lake Tapps line lowering component of the Evergreen Expansion project will qualify for rolled-in rate treatment. Northwest states that the total estimated project cost, as amended, is approximately $240.9 million, compared to the original estimate of $239.8 million.

Northwest states that due to delays in acquiring all the necessary state and local permits and landowner easements, coupled with the need to limit certain construction activities to allowable environmental windows, its current construction schedules anticipate completion of the facilities necessary to provide the contracted incremental service for the Evergreen Expansion shippers by October 1, 2003 (instead of June 1, 2003, as originally anticipated), with the compression-only portion of such facilities to be completed approximately three months earlier. Northwest requests that the Commission issue the requested amended certificate by April 15, 2003, so the proposed expansion facility modifications can be completed within the new construction schedule.

Any questions regarding this application should be directed to Mr. Gary Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900 or call (801) 584–7117 or Fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued. *Comment Date:* February 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1722 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–42–000]

Occidental Power Services, Inc., Complainant, v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

January 15, 2003.

Take notice that on January 14, 2003, pursuant to Sections 206 and 306 of the Federal Power Act, Occidental Power Services, Inc. (OPSI), filed a Complaint Requesting Fast Track Processing against PJM Interconnection, L.L.C. (PJM), requesting that the Commission direct PJM to enforce its Open Access Transmission Tariff by (1) billing OPSI at Locational Marginal Pricing by bus, or until bus pricing is available, nodal pricing, and (2) allowing OPSI to submit its own next day data based on OPSI's actual hourly load.

OPSI states that copies of the filing were served upon PJM, Delmarva Power & Light Company, and the Delaware Public Service Commission. OPSI is not aware of any other parties that may be expected to be affected by the complaint.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1819 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF03–34–000]

SP Newsprint Co.; Notice of Filing

January 21, 2003.

Take notice that on January 16, 2003, SP Newsprint Co. filed with the Federal Energy Regulatory Commission (Commission) a response to a Commission Staff Inquiry requesting a clarification of question 1C on SP Newsprint Co.'s FERC Form 556.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1729 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–004]

Texas Eastern Transmission, LP; Notice of Negotiated Rate Filing

January 15, 2003.

Take notice that on January 10, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective February 10, 2003.

Original Sheet No. 107
Sheet Nos. 108—125

Texas Eastern states that Original Sheet No. 107 filed herewith lists Duke Energy Hanging Rock, LLC (Duke Energy Hanging Rock) as a party to a negotiated rate agreement.

Texas Eastern also states that the negotiated rate agreement between Duke Energy Hanging Rock and Texas Eastern under Rate Schedule MLS–1 is attached to the filing as Appendix A.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. *Comment Date:* January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1738 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–234–000]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 2003.

Take notice that on January 13, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective February 12, 2003:

Seventh Revised Sheet No. 200
Third Revised Sheet No. 265

TransColorado states that the purpose of this filing is to add a new section 27 to the General Terms and Conditions (GT&C) of TransColorado's FERC Gas Tariff addressing the use of offsystem capacity acquired by TransColorado and a waiver of the Commission's ''shipper must have title'' requirement.

TransColorado states that a copy of this filing has been served upon all of its customers and affected 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1735 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–40–000]

Wisconsin Public Service Corporation, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Filing

January 15, 2003.

Take notice that on January 13, 2003, Wisconsin Public Service Corporation (WPS) tendered for filing a complaint against the Midwest Independent Transmission System Operator, Inc. (MISO).

The complaint requests that the Commission order MISO to merge two transmission service requests as a complete path from source to sink and to allow WPS to reassign the receipt point for this transmission path to an alternate receipt point.

WPS states that copies of the filing were served on MISO.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1817 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Meeting With the Hualapai Nation Regarding the Proposed Red Lake Gas Storage Project

January 15, 2003.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a meeting with the Hualapai Nation to address certain issues regarding the proposed Red Lake Gas Storage Project. The meeting will be held on January 24, 2003, at 1 pm, at the Hualapai Nation's Tribal Multipurpose Building in Peach Springs, Arizona 86434.

The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P.''s proposed project in Mohave County, Arizona, in cooperation with the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Department of Environmental Quality (ADEQ), and the Arizona Game and Fish Department (AGFD). The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

In view of the potential for impacts to resources of special concern to the Hualapai Nation resulting from construction of the proposed project, the meeting will not be open to the public. Attendance at the meeting will be limited to the Hualapai Tribal Council, members of the Hualapai Tribe, and representatives of the Commission, BLM, ADEQ, and AGFD.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1723 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

New England Power Pool and ISO New England, Inc.: Docket Nos. ER02–2330–001, EL00–62–052, ER02–2330–002, EL00–62–053, ER02–2330–003 and EL00–62–054; ISO New England, Inc.: Docket Nos. ER02–2330–004 and ER02–2330–005; New England Power Pool: Docket Nos. ER03–210–000 and ER03–210–001; Notice of Staff's Participation in ISO New England Transmission Pricing Workshop

January 15, 2003.

ISO New England, Inc. has invited Commission staff to participate in a transmission pricing workshop that will be held on January 17, 2003 from 10 a.m. to 3 p.m. The meeting will be held at the Sheraton Springfield Monarch Place Hotel, Springfield, Massachusetts. Members of the public may attend. Further information about the meeting and a copy of the registration form is available at *www.iso-ne.com/seminars/schedule.html*. Representatives of the

Commission's staff may participate in the meeting.

During the course of the meeting, it is possible that discussions may overlap with issues in the above-captioned dockets. A summary of any such discussion will be placed in each of the listed dockets, if appropriate.

For more information, contact John McPherson, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at 202–520–8232 or *john.mcpherson@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1820 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0001, FRL–7444–2]

Agency Information Collection Activities: Proposed Collection and Comment Request; National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) to renew the existing Performance Track Program Level One: The Environmental Achievement Track ICR # 1949.01, OMB #2010–0032, scheduled to expire on June 30, 2003.

DATES: Comments must be submitted on or before March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Robert D. Sachs by telephone at 202–566–2884, by facsimile at 202–566–0966, or by e-mail at *sachs.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2003–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft ICR, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are members of the National Environmental Performance Track Program.

Title: The National Environmental Performance Track Program (OMB #2010–0032; EPA ICR No. 1949.02) expiring June 30, 2003.

Abstract: EPA announced the National Environmental Performance Track program on June 26, 2000. The program is designed to recognize and encourage facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. Applications submitted by facilities are used by EPA and participating regulatory entities to determine whether the applicant qualifies for the program. A total of 277 facilities are current members of this voluntary program. Environmental Performance Track members are also required to submit an annual performance report documenting their environmental performance relative to the commitments they made upon entry into the program. This information is important to determine whether participants are meeting their commitments, as well as to evaluate the effectiveness of the program. The public reporting element of the program also provides information to the local community.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that all facilities who voluntarily respond to this information collection by electing to participate in the National Performance Track program have determined that the expected benefits of participation outweigh any burdens associated with preparing the response. EPA estimates that the application will

require approximately 40 hours to complete, and post-acceptance activities such as a demonstration of compliance, Environmental Management System documentation and reporting, a demonstration of continuous improvement, reporting, and public outreach are estimated to require approximately 190 hours per facility. EPA estimates total respondent costs for the 277 current members to be $295,836 for the application phase and $1,497,531 for participation in the program. For an individual facility, EPA estimates the application phase to cost $1068.00 and program participation to cost $5406.25. Preparing and submitting the application is a one-time event and program participation activities occur on an annual basis provided that the facility remains a member of the program.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 14, 2003.

Daniel J. Fiorino,

Director, Performance Incentives Division.

[FR Doc. 03–1777 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7443–9]

Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Upper Tenmile Creek Watershed, Lewis and Clark County and Jefferson County, Montana

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), concerning the Upper Tenmile Creek Mining Area NPL site and Basin Mining Area NPL site in Lewis and Clark County and Jefferson County, Montana (Sites). The proposed prospective purchaser agreement with the State of Montana, acting by and through the Montana Department of Environmental Quality (MDEQ), would resolve any liability the State might incur when it acquires property which was previously part of the Basin Creek Mine from the Chapter 7 bankruptcy estates of Pegasus Gold Montana Mining, Inc. (PGMMI) and Pangea Explorations, Inc. (PEI). MDEQ would acquire the property through a settlement agreement with the bankruptcy trustee; the agreement is attached to the proposed prospective purchaser agreement.

EPA and the U.S. Department of Agriculture, Forest Service (Forest Service) intend to use a portion of the property, known as the Luttrell Pit mine waste repository, to implement CERCLA remedial actions at the Sites.

Parties to the Agreement include EPA, the Forest Service, MDEQ and the United States Department of Justice.

DATES: The public should submit comments to EPA relating to this proposed settlement on or before February 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the EPA's Region VIII Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado, (303) 312–6473 and at EPA's Montana Superfund Records Center, Federal Office Building, 10 West 15th Street, Suite 3200, Helena, Montana, (406) 457–5046. Comments should be addressed to Carol J. Pokorny, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Mining Area and Basin Mining Area Sites Prospective Purchaser Agreement with the State of Montana.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Enforcement Attorney, at (303) 312–6925.

Dated: January 9, 2003.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 03–1769 Filed 1–24–03; 8:45 am]

BILLING CODE 6460–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 13, 2003, regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Wednesday, February 19, 2003. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 22, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–1857 Filed 1–23–03; 11:18 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–99]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than February 17, 2003. Reply comments may be filed no later than March 3, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public

Notice, CC Docket 98–67, released January 15, 2003. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Interested parties may file comments in this proceeding no later than February 17, 2003. Reply comments may be filed no later than March 3, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. 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 appears 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 Services 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 a.m. to 7 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–46–02
Alabama Public Service Commission, State of Alabama
File No: TRS–19–02
Alaska Public Utilities Commission, State of Alaska
File No: TRS–49–02
District of Columbia Public Service Commission, District of Columbia
File No: TRS–10–02
Illinois Commerce Commission, State of Illinois
File No: TRS–34–02
Department of Public Utilities, State of Massachusetts
File No: TRS–39–02
Minnesota Department of Public Service, State of Minnesota
File No: TRS–55–02
Mississippi Public Service Commission, State of Mississippi
File No: TRS–16–02
New York State Department of Public Service, State of New York
File No: TRS–12–02
Information Services Division, State of North Dakota
File No: TRS–57–02

Oklahoma Telephone Association, State of Oklahoma
File No: TRS–11–02
South Carolina Budget & Control Board, State of South Carolina
File No: TRS–27–02
Department of Social and Health Services, State of Washington

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–1744 Filed 1–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 2003 program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2003 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in the allocation of all grant funds returned to FMCS.

DATES: Comments must be submitted before February 26, 2003.

ADDRESSES: Send comments to: Jane A. Lorber, Director, Labor Management Grants Program, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane A. Lorber, 202–606–8181.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2003

I. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 2003 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

A. Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

B. Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

II. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate to:

A. Improve communication between representatives of labor and management;

B. Provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

C. Assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

D. Study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

E. Enhance the involvement of workers in making decisions that affect their working lives;

F. Expand and improve working relationships between workers and managers; and

G. Encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees. The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the fore mentioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multi-county, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2003, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.,* job training, mediation of contract disputes, etc.)

Required Program Elements

A. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must

document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

B. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or not credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

C. *Approach* — This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications.

1. A discussion of the strategy the committee will employ to accomplish its goals and objectives;

2. A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.,* members represent 70% of the area or company/plant workforce).

3. A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees.

4. In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

5. A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

6. For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

D. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2003, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

E. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

F. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section C.2 of the Required Program Elements section above.

G. *Other Requirements*—Applicants are also responsible for the following:

1. The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

2. From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

3. A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

4. An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

5. An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

A. The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

B. The degree to which appropriate and *measurable* goals and objectives has been developed to address the problems/needs of the applicant.

C. The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results.

This section will also address the degree of innovativeness or uniqueness of the proposed effort.

D. The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

E. The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

F. The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-à-vis its goals and approach.

G. The overall feasibility of the proposed project in light of all of the information presented for consideration.

H. The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

III. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their

organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third parties, which do not directly support the operation of a new or expanded committee, will not be deemed eligible, nor will the applications signed by entities such as law firms or other third parties failing to meet the above criteria.

OMB Circular 110 will bind successful grantees, *i.e.* individuals ''that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded* (emphasis added) from competing for such procurements.''

Applicants who received funding under this program in the past for committee operations are not eligible to re-apply. An exception may be made for grantees that seek funds on behalf of entirely different committee members whose efforts are totally outside of the scope of the original grant.

IV. Allocations

The FY2003 appropriation for this program anticipated to be $1.5 million, of which at least $1,000,000 available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2003 appropriation to contract for program support purposes (such as evaluation) other than administration.

V. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specified period, these grants may be extended for up to six months. Continuation awards may be made.

The dollar range of awards is as follows:

- Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only.* If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

VI. Cash Match Requirements and Costs

All applicants must provide at least 10 percent of the total allowable project costs in cash. matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of costs allowed, applicants are encouraged to consult the FY2003 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

VII. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. Applications must be postmarked no later than June 28, 2003. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2003.

All FY2003 grant applicants will be notified of results and all grant awards will be made before October 1, 2003. Director, Labor-Management Grants Program, will administratively reject applications submitted after the June 28 deadline date or those that fail to adhere to eligibility or the other major requirements.

VIII. Contact

Individuals wishing to apply for funding under this program should

contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*http://www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

Dated: January 13, 2003.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 03–1695 Filed 1–24–03; 8:45 am]

BILLING CODE 6732–01–M

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 February 10, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Eldred 2002 Family Trust, Beloit, Wisconsin; and Co–Trustees Helen M. Eldred, Beloit, Wisconsin; Susan E. Boettcher, Wauwatosa, Wisconsin; Steven M. Eldred, Beloit, Wisconsin; and Richard J. Langer, Madison, Wisconsin; to acquire control of Centre 1 Bancorp, Inc., Beloit, Wisconsin;, and thereby indirectly acquire First National Bank and Trust Company of Beloit, Beloit, Wisconsin.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1718 Filed 1–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03–670) published on page 1851 of the issue for Tuesday, January 14, 2003.

Under the Federal Reserve Bank of Richmond heading, the entry for Forest Merger Corporation and FBR TRS Holdings, both in Arlington, Virginia, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Forest Merger Corporation and FBR TRS Holdings, Inc., both in Arlington, Virginia; to become bank holding companies by merging with Friedman, Billings, Ramsey Group, Inc., and FBR Asset Investment Corporation, both in Arlington, Virginia, and thereby indirectly acquiring FBR Bancorp, Inc., Arlington, Virginia, and FBR National Bank and Trust, Bethesda, Maryland. After the merger, Applicants would be renamed Friedman, Billings, Ramsey Group, Inc.

In addition, Applicants also have applied to acquire more than 5 percent of the voting shares of Hawthorne Financial Corporation, El Segundo, California, and thereby indirectly acquire Hawthorne Savings, F.S.B., El Segundo, California.

Comments on this application must be received by February 18, 2003.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1719 Filed 1–24–03; 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 February 20, 2003.

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

1. Piedmont Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Piedmont Bank of Georgia, Atlanta, Georgia.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. American Eagle Financial Corporation, Albertville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Riverview Community Bank, Otsego, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1720 Filed 1–24–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0532]

Nonclinical Datasets; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug

Evaluation and Research (CDER), is seeking volunteers to participate in a pilot project involving the evaluation of various analysis tools to facilitate the use of electronic datasets for analysis of animal data submitted to FDA by applicants of new drug applications (NDAs). These analysis tools will allow a reviewer to more efficiently display and evaluate nonclinical datasets submitted in electronic format.

DATES: Submit written requests to participate in the pilot project by March 28, 2003. Comments on this pilot project may be submitted at any time.

ADDRESSES: Submit written requests to participate and comments regarding the pilot project to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, *levinr@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under current FDA regulations (21 CFR 314.50), applicants must provide nonclinical data in NDAs. In January 1999, the agency published guidance describing how applicants could provide nonclinical data in the form of electronic datasets. In the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—NDAs,'' FDA provided recommendations on how to organize the datasets and how to provide descriptive information on the datasets and the data variables (metadata). The Center for Biologics Evaluation and Research (CBER) has provided similar recommendations for biologics license applications (BLAs) in their guidance entitled ''Providing Regulatory Submissions in Electronic Format—BLAs.'' A joint CBER and CDER guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—General Considerations,'' which published in January 1999, provided recommendations for the file formats for nonclinical datasets.

Recently, FDA received recommendations for a standard presentation of certain clinical data from the Clinical Data Interchange Standards Consortium, Inc. (CDISC), a nonprofit organization including members from pharmaceutical companies, biotechnology companies, contract research organizations, and software vendors. CDISC is currently facilitating the work on similar standards for nonclinical datasets. Where possible, the standards developed for clinical datasets and metadata should be used in the development of standardized presentations of the datasets for routine toxicology studies (e.g., chronic toxicology and carcinogenicity studies).

In addition, CDER has entered into a cooperative research and development agreement with PharmQuest Corp. for the development of analysis tools by which to evaluate the nonclinical datasets prepared using defined standards. The use of these standardized datasets will reduce the amount of effort required of the reviewer to evaluate nonclinical data.

The purpose of the pilot project is to help in the development of analysis tools designed to facilitate the review and evaluation of electronic nonclinical datasets and to obtain feedback from reviewers and pharmaceutical companies on the creation and use of standardized nonclinical data and metadata.

II. Pilot Project Description

This pilot project is part of an effort to improve the process for submitting nonclinical data. Eventually, FDA expects to recommend detailed data standards for the submission of nonclinical data. Participants in this pilot project will have the opportunity not only to assist the agency in testing the use of various analysis tools and standardized nonclinical data and metadata, but would also be able to familiarize themselves with the process at an early stage of development. Only a few participants are needed for this pilot.

A. Initial Approach

Because a limited group of voluntary participants are needed, the agency will use its discretion in choosing volunteers, based on their having previously submitted nonclinical datasets to FDA and having demonstrated familiarity with our recommendations for creating nonclinical datasets as presented in the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—NDAs.'' During the pilot project, specific technical instructions for providing the nonclinical data for testing will be made available to pilot participants. Participants in the pilot project will be asked to provide nonclinical datasets as described in the technical instructions and to provide technical feedback.

B. Scope

Existing requirements for the submission of nonclinical data will not be waived, suspended, or modified for purposes of this pilot project. The pilot project will test the preparation and use of the submitted nonclinical electronic datasets.

C. How to Participate

Written requests to volunteer should be submitted to the Dockets Management Branch (see **ADDRESSES**). Requests are to be identified with the docket number found in brackets in the heading of this document.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this pilot project. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. We will consider all received comments in making a determination on electronic filing and when drafting a guidance document for submitting nonclinical study data as electronic datasets. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1743 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0068]

Determination That Chymopapain 10,000 Units/Vial Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to

approve abbreviated new drug applications (ANDAs) for chymopapain 10,000 units/vial injection.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drugs approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

CHYMODIACTIN (chymopapain 10,000 units/vial injection) is the subject of NDA 18–663. CHYMODIACTIN is indicated for the treatment of patients with documented herniated lumbar intervertebral discs whose symptoms and signs, particularly sciatica, have not responded to an adequate period or periods of conservative therapy. FDA approved the NDA for CHYMODIACTIN on November 10, 1982.

On February 12, 2002, ChymoCorp submitted a citizen petition (Docket No. 02P–0068/CP1) under 21 CFR 10.30 requesting that the agency determine whether chymopapain manufactured by Abbott Laboratories under the brand name CHYMODIACTIN was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. Abbott Laboratories informed the agency by telephone that the company no longer markets CHYMODIACTIN. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list chymopapain 10,000 units/vial injection in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CHYMODIACTIN (chymopapain 10,000 units/vial injection) may be approved by the agency.

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1742 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0525]

Medical Devices; Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA.'' The document is intended to provide guidance for industry and other interested parties for the submission of chemical indicators such as process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by April 28, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, extension 143.

SUPPLEMENTARY INFORMATION:

I. Background

This document is intended for applicants who plan to market chemical indicators for health care facilities. It includes guidance on the submission of premarket notification [510(k)] submissions for process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test. Chemical indicators are an integral part of monitoring sterilization processes in health care facilities because they provide the user with information on the effectiveness of a sterilization process. FDA is issuing this draft guidance because the agency recognizes the importance of providing applicants and other interested parties with specific recommendations for the

submission of premarket notifications for chemical indicators.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on chemical indicators. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive the document ''Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1420) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing, and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The draft guidance document and any comments FDA receives may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–1684 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–01]

Notice of Proposed Information Collection for Public Comment on the American Housing Survey (AHS)—2003 National Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: the Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202)–708–1060, Ext. 5887 (this is not a toll-free number) or Jane Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2003 American Housing Survey—National Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 2003 American Housing Survey-—National Sample (AHS–N) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 2003 survey is similar to previous AHS–N surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–21, AHS–22 and AHS–23.

Members of affected public: Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 63,387.

Estimated Responses per Respondent: 1 every two years.

Time per respondent: 33 minutes.

Total hours to respond: 35,169.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 16, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–1691 Filed 1–24–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Glen Canyon Dam Adaptive Management Work Group; Notice of Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and provide recommendations to the Secretary with respect to her responsibility to comply with the Grand Canyon Protection Act of October 30, 1992, embodied in Public Law 102–575.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

The certification of renewal is published below.

Certification

I hereby certify that renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the purpose of duties imposed on the Department of the Interior by 30 U.S.C. 1–8.

Dated: January 22, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–1792 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping Meetings and Intent To Prepare an Environmental Assessment for the Proposed Designation of an Experimental Population of Northern Aplomado Falcon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), are providing this notice to advise the public that a draft environmental assessment will be prepared, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 432 *et seq.*), in conjunction with a proposed rule to establish, under section 10(j) of the Endangered Species Act of 1973, as amended (Act), an experimental population of northern aplomado falcon (*Falco femoralis septentrionalis*) in New Mexico and Arizona. We will hold five public informational sessions and scoping meetings (*see* **DATES** and **ADDRESSES** sections).

Through this notice and the public scoping meetings, we are seeking comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the scope of the environmental analysis, including the alternatives that should be analyzed.

DATES: Comments may be submitted directly to the Service (see **ADDRESSES** section) by February 11, 2003, or at any of the five scoping meetings to be held in February 2003. Meetings will include an informational session and a subsequent scoping meeting.

We will hold public informational sessions and scoping meetings at the following dates and times:

1. February 3, 2003

Douglas, AZ
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

2. February 4, 2003

Deming, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

3. February 5, 2003:

Alamogordo, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

4. February 6, 2003

Carlsbad, NM
Informational session: 5:30 p.m.
Scoping meeting: 7:30 p.m.

5. February 11, 2003

Socorro, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

ADDRESSES:

Meetings

The public informational sessions and scoping meetings will be held at the following locations:

1. Douglas, AZ: Cochise College-Little Theatre, 4190 West State Highway 80; (520) 417–4143.

2. Deming, NM: Deming High School Auditorium, 1100 S. Nickel; (505) 546–8126.

3. Alamogordo, NM: Alamogordo Civic Center, 800 East 1st Street; (505) 439–4142.

4. Carlsbad, NM: New Mexico State University at Carlsbad-Instructional Building, Room 153, 1500 University Drive; (505) 234–9444.

5. Socorro, NM: New Mexico Tech-Main Auditorium, Macey Center, 801 Leroy Place; (505) 835–5342.

Information, comments, or questions related to preparation of the draft environmental assessment and the NEPA process should be submitted to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov*. All comments, including names and addresses, will become part of the administrative record and may be released.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process, preparation of the draft environmental assessment, or the development of a proposed rule designating an experimental population may be directed to Carrie Chalcraft at telephone number (505) 346–2525.

SUPPLEMENTARY INFORMATION:

Background

The aplomado falcon (*Falco femoralis*) is a widespread but sparsely distributed species through the Americas. Ranging from near the Mexican border south to Argentina, the aplomado falcon is a fast-flying predator that feeds upon medium-sized birds, insects, rodents, bats, and reptiles; pairs often hunt cooperatively. The northern subspecies (*F.f. septentrionalis*) was widespread throughout southwestern grasslands prior to the 1930s (Hector 1981, 2000). It was regarded as fairly common throughout the humid coastal

savannas of Texas and Tamaulipas and the drier interior grasslands. Numerous egg sets were collected in southern Texas between 1888 and 1915 (Hector 1981).

Populations of the northern aplomado falcon began to decline during the first half of the twentieth century. Prior to reintroduction efforts in Texas, the last known breeding of this species within the United States occurred near Deming, New Mexico, in 1952. Breeding pairs became established in Texas once again in 1995, as a result of reintroduction efforts. There have been no verified sightings of northern aplomado falcons in Arizona since 1940 (Philips *et al.* 1964). Sightings of northern aplomado falcons have continued in New Mexico since the 1950s, but with only a handful of unconfirmed sightings per decade from the 1970s and 1980s despite many searches by ornithologists. The frequency of sightings ranged from 1 to 6 confirmed sightings per year throughout the 1990s. These sightings were followed by an unsuccessful nesting attempt in New Mexico in 2001, and the successful fledging of 3 nestlings from a nest in 2002.

There remains some debate concerning the exact cause of the decline of the northern aplomado falcon. Hypotheses implicating habitat loss, pesticide use, climatic change, egg and skin collecting, disease, and others have been advanced. We may therefore never fully understand the chain of events that led to the virtual extirpation of this species throughout the northernmost portion of its range (Cade *et al.* 1991). Unquestionably, grassland savannas in the southwestern United States underwent a substantial physical change during the decline of the northern aplomado falcon. Naturally occurring range fires maintained the humid grasslands of coastal Texas and Tamaulipas, once known as the ''Wild Horse Prairie.'' By World War II much of that prairie had been tilled into crops, and, with the control of range fires, what prairie remained soon became overgrown with brush species such as Honey Mesquite (*Prospis glandulosa*), Blackbrush Acacia (*Acacia rigidula*), Huisache (*Acacia smallii*), and Live Oak (*Quercus virginiana*) (Bogusch 1952). Brush encroachment may have increased the density of the great-horned owl (*Bubo virginianus*), a principal predator of falcons. Already greatly reduced in number and isolated through habitat loss, the remaining falcons may have been eliminated by the widespread use of organochlorines in agriculture (Kiff *et al.* 1980).

The decline of the northern aplomado falcon in the drier grasslands of west Texas, New Mexico, and Arizona may have resulted from different causes. Grasslands then were substantially altered both by farming and by intense overgrazing that reached its peak during 1870–1890 (Hastings and Turner 1965). The latter is believed to have reduced the diversity of the native short grass prairie. In time, these grasslands likely became less productive for the bird species upon which falcons preyed.

We listed the northern aplomado falcon as an endangered species in 1986 and published a Recovery Plan in 1990. As of September 2002, at least 37 pairs of falcons have become established in Texas as a result of release efforts. Monitoring efforts in northern Mexico indicate a population of 30–35 naturally occurring pairs currently exists in northern Chihuahua.

An active release effort is currently ongoing in both south and west Texas. The Peregrine Fund, a nonprofit, nongovernmental conservation organization, began recovery efforts during 1978–1988 when 25 young falcons were collected from nests in Mexico to establish a captive breeding program. The Peregrine Fund conducted a pilot release project during 1985–1989, and restoration began on a larger scale in 1993 with modified hacking procedures developed from Peregrine Falcon reintroduction. Although captive propagation of this species has been challenging, The Peregrine Fund has released 813 captive-bred falcons into Texas by the ''hacking method.'' As of spring 2002, 37 established pairs have successfully fledged more than 92 young in a region where this species had been absent for over 50 years. Releases are being conducted on private property under a Safe Harbor Agreement enrolling 1.4 million acres in south and west Texas.

Experimental Populations

We are committed to the long-term recovery of the northern aplomado falcon (*Falco femoralis septentrionalis*) in accordance with the recommendations of the 1990 recovery plan for this species. One of the primary goals of the Northern Aplomado Falcon Recovery Plan is to ''Reestablish the northern aplomado falcon in the U.S. and Mexico.'' Use of our authorities under section 10(j) of the Act (described below) may be a useful tool to achieve this recovery goal in Arizona and New Mexico. The purpose of this scoping process is to aid the development of an environmental assessment by collecting comments on this alternative as well as developing other alternatives that are consistent with the species' Recovery Plan.

Congress made significant changes to the Act in 1982 with addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' On the basis of the best available information, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater

discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR § 17.81(d)).

We have not yet identified possible alternatives for accomplishing our recovery goals in Arizona and New Mexico and we do not know what the preferred alternative (the proposed action) or other alternatives might entail. Once identified, the alternatives will be carried forward into detailed analyses pursuant to NEPA.

Any process to release falcons as ''experimental'' will require that we: (1) Compile and analyze all new biological information on the species; (2) review and update the administrative record; (3) review the overall approach to the conservation and recovery of the falcon in the United States; (4) review available information that pertains to the habitat requirements of this species, including material received during the public comment period from this notice and comments on the listing; (5) review actions identified in the northern aplomado falcon recovery plan (Service 1990); (6) determine what areas, if any, might require special management or areas that should be excluded from the experimental population area; (7) write a draft environmental assessment and present alternatives to the public for review and comment; (8) incorporate public input and use current knowledge of falcon habitat use and availability to precisely map a proposed experimental population area; (9) present this proposal in a proposed rule for publication in the **Federal Register** and solicit comments from the public; and (10) finalize the environmental assessment and the rule designating an experimental population and identifying an experimental population area, and authorizing the release of falcons as experimental in New Mexico and Arizona, or adopt the no action alternative and not permit the release of northern aplomado falcons as experimental in these areas.

We are the lead Federal agency for compliance with NEPA for this action. The draft environmental assessment will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The draft environmental assessment will be sent out for a minimum 30-day public review period, during which time comments will be solicited on the adequacy of the document. The final environmental document (*e.g.*, environmental assessment or environmental impact statement) will address the comments we receive during public review and will be furnished to all who commented on the draft environmental assessment, and made available to anyone who requests a copy. This notice is provided pursuant to regulations for implementing NEPA.

Public Comments Solicited

The Service wishes to ensure that any proposed rulemaking to designate an experimental population for the aplomado falcon we might issue and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning reasons why any particular area should or should not be included in an experimental population designation, information on the distribution and quality of habitat for the northern aplomado falcons, land or water use practices and current or planned activities in areas that may be affected by a designation of an experimental population, and any other pertinent issues of concern. We seek comment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. To promulgate a proposed rule to establish an experimental population for the aplomado falcon and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received.

We will give separate notice of the availability of the draft environmental assessment, when completed, so that interested and affected people may comment on the draft and have input into the final decision. The draft environmental assessment will undergo a minimum 30-day public comment period.

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Dated: January 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–1943 Filed 1–23–03; 4:07 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Arizona State Office.

ACTION: Notice of intent to prepare a Land Use Plan Amendment (LUP) and Environmental Assessment (EA).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Arizona (AZ) State Office intends to prepare an Arizona Statewide Land Use Plan Amendment to incorporate current fire management policy and to prepare an Environmental Assessment that will amend seven land use plans. These plans are: Arizona Strip District Resource Management Plan (RMP) (1992), Kingman RMP (1995), Lower Gila North Management Framework Plan (MFP) (1983), Lower Gila South RMP (1988), Phoenix RMP (1989), Safford RMP (1992 and 1994) and Yuma RMP (1986 and 1987). The purpose of the Arizona Statewide LUP Amendment is to establish consistent methods of managing Arizona wildland fire across the state and among the various agencies and groups who participate in wildland fire fighting, ecology, and management, while at the same time allowing appropriate and fire-safe enjoyment of BLM-administered lands in Arizona. The amendment will result in a consistent approach to incorporating the National Fire Policy in land use plans.

This planning activity encompasses approximately 12 million surface acres of public land. The action is being conducted under the authority of BLM Planning Regulation 43 CFR, 1610 and will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. This collaborative process will take into account local, regional, and national needs and concerns by involving other federal agencies, Native American tribes, conservation groups, recreationists, the public, and other stakeholders throughout the planning process.

This plan amendment will analyze fires and fuels management actions and their impacts on the human environment for the seven BLM field offices in one document in order to ensure consistency and collaboration of the interested publics. An EA-level analysis and Finding of No Significant Impact (FONSI) are anticipated, followed with an approved plan amendment and Decision Record (DR).

DATES: The public comment period commences with the publication of this notice. Public meetings will be held throughout the plan scoping and preparation period and will tentatively be held in February and March of 2003. In order to ensure local community participation and input, BLM will rotate public meetings among towns in the planning area, which include the metro-Phoenix, Kingman, Lake Havasu, Yuma, Tucson, and Safford, Arizona; and St. George, Utah. BLM encourages early participation by all those interested so that they can determine the future management of the public lands. At least 15 days public notice will be given for activities where the public is invited to attend, and meetings and comment deadlines will be announced through the local news media, newsletters, and the BLM Web site (*http://www.az.blm.gov*). The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Written comments will be accepted throughout the planning process. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the EA.

ADDRESSES: Written comments should be sent to: AZ LUP Fire, Fuels and Air Quality Amendment Planning, Bureau of Land Management, 222 North Central, Phoenix, AZ 85002–2203. Use the above address to mail or hand-deliver written comments; additionally, comments can be faxed to (928) 692–4414. Comments, including names and street addresses of respondents, will be available for public review at the BLM Arizona State Office at the above address during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EA. Documents relevant to the planning effort may be examined during normal business hours, Monday through Friday, at the BLM Arizona State Office at the above address. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Sherry Hirst, Kingman Field Office, 2475 Beverly Avenue, Kingman, AZ 86401, telephone (928) 692–4435.

SUPPLEMENTARY INFORMATION: During the planning process, the BLM will consider appropriate management response to wildland fires as well as how prescribed fire can be used to help achieve resource objectives and to reduce dangerous accumulations of hazardous fuels. The amendment will emphasize appropriate response to wildland fires based on a consideration of firefighter and public safety, threats to private property, anticipated suppression costs, resource values at risk, resource benefits, the return of fire as a process to ecosystems, public attitudes and behavior regarding wildland fire hazards, and political and social concerns. Other issues that will be addressed include: hazardous fuels as an issue, and the use of prescribed fire, mechanical treatment, and/or chemical treatment(s) to reduce and/or manage hazardous fuels; hazardous fuels in the Wildland Urban Interface (WUI) and associated issues, and the various tools to approach these issues; appropriate management response, including managing natural fire starts for resource benefit; a statewide programmatic emergency fire rehabilitation plan; and air quality analysis.

Each year, the BLM responds to wildland fires that burn thousands of acres of land for which BLM has fire protection responsibility. The BLM has wildland fire protection responsibility on more than 12 million acres of public land in Arizona. By agreement, the BLM also protects approximately 9 million acres of other federal and state agency lands in Arizona.

Recent fire history statistics demonstrate the connection between past fire management practices and threats to human life and safety, risk of severe wildland fire, and disruption of critical ecological processes. The deaths of 34 firefighters during the 1994 fire season emphasized the danger that fuels accumulation poses to firefighters, and led to the 1995 Federal Wildland Fire Management Policy and Program. The effect of severe wildland fire on resource values is an additional concern to resource-management agencies. In 2002, wildland fires raged across Arizona, with over 600,000 of acres impacted, the largest number of acres to be impacted by wildland fire in the states history. Nationally, more acres burned in 2002 than in any other year in the last half-century.

BLM personnel, other agencies, individuals and user groups have identified preliminary issues and management concerns. Additional issues and modifications to known issues will be identified during public scoping. The major issues identified so far include management of public land resources including natural resource management; cultural resource management and protection; recreation/visitor use and safety; management of grazing, and other uses; as well as integration of public land management with the local community, tribal groups, and other agency needs and plans.

After gathering public comments on what issues the plan should address, BLM will place the suggested issues in one of three categories and provide an explanation for each issue placed into category two or three:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The public is encouraged to help identify planning issues and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include but not limited to rangeland management, outdoor recreation, fire, archaeology, wildlife, wilderness, hydrology, soils, sociology, and economics.

Frank B. Miller,

Acting Deputy State Director Resources, Arizona BLM State Office.

[FR Doc. 03–1740 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Notice of Public Meeting, Central California Resources Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council (RAC) for Central California will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, January 31, February 1 in the Arletta Douglas Room of the Holbrooke Hotel, 212 West Main Street, Grass Valley, California beginning at 8 a.m. both days. The agenda calls for an orientation session on Friday, and a field trip to the Yuba Goldfields on Saturday with a return to the meeting room for discussion. There will be a public comment period beginning at 3:30 p.m. on Friday.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, topics to be discussed include:

Facilitated orientation and future planning for Council members.

The Yuba Goldfields area on the Yuba River, including issues of public access. All meetings are open to the public. The public may present written comments to the Council, and a time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as indicated above.

Dated: January 14, 2003.

Larry Mercer,

Public Affairs Officer.

[FR Doc. 03–1696 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: January 21, 2003.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget for extension of the currently approved DataWeb user registration form (OMB No.: 3117–0190) in connection with the ITC DataWeb Public Access Project. The user registration forms are required to accurately analyze usage and data reports generated by user sectors and to save user product and country lists for user reference during future logins. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received not later than 60 days after publication of this notice.

ADDRESSES: Signed comments should be submitted to Marilyn Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and draft Supporting Statement to be submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at *http://www.usitc.gov* or may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone no. 202–205–3431). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal, (telephone no. 202–205–1810).

Request for Comments

Comments are solicited as to (1) whether the proposed information collection 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 proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Summary of the Proposed Information Collection

The forms are for use by the Commission in connection with the ITC DataWeb. The ITC DataWeb provides on-line, rapid and customized retrieval of U.S. trade and tariff data and has been an Internet tool primarily for government users. The interagency International Trade Data System (ITDS) board chairman has requested that the ITC DataWeb be made formally available to the public. The user registration forms are required to accurately track usage, data reports generated, and costs by user sectors and to save user product and country lists for user reference during future logins. The forms would appear on the ITC DataWeb internet site (*http://dataweb.usitc.gov)* and would need to be filled out only once.

Summary of Proposal

(1) *Number of forms submitted:* one.

(2) *Title of forms:* ITC Tariff and Trade DataWeb: ''Create New User Account Form''.

(3) *Type of request:* extension.

(4) *Frequency of use:* single data gathering.

(5) *Description of respondents:* government and private sector users of the on-line ITC DataWeb.

(6) *Estimated number of respondents:* 10,000 annually.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the forms that qualify as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Peg MacKnight (E-mail *pmacknight@usitc.gov* or telephone 202–205–3431). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the forms are objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov)*.

By order of the Commission.

Issued: January 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1789 Filed 1–24–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 003–2003]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Drug Enforcement Administration (DEA), Department of Justice, proposes to establish a new system of records entitled, ''Clandestine Laboratory Seizure System (CLSS) Justice/ DEA–002'' which covers the described records maintained by the El Paso Intelligence Center (EPIC).

The Clandestine Laboratory Seizure System (CLSS), JUSTICE/DEA–002, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) was previously published in the **Federal Register**.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by [insert date 30 days after publication in the **Federal Register**]. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/DEA–002

SYSTEM NAME:

Clandestine Laboratory Seizure System (CLSS).

SYSTEM LOCATION:

Department of Justice, Drug Enforcement Administration, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, TX 79908–8098

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified or referenced in the course of investigations relating to the illicit manufacture, distribution, sale or possession of, or trafficking in controlled substances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of (1) personal identification and location data which may include name (including aliases and similar sounding names), occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/ethnicity, alien status, addresses, and other miscellaneous identifying information, including, for example, telephone, passport, drivers license, vehicles registration, and social security numbers; (2) multi-source drug intelligence data; (3) counter-drug enforcement information, including identification, location, arrest, and prosecution of persons involved in the illicit trade or trafficking, and other activities and civil proceedings related to such enforcement activities; (4) information related to organizations involved in the illicit trade in controlled substances either in the United States or internationally; (5) reports of arrests; and (6) other information involving the illicit possession, manufacture, sale, purchase, and transport of controlled substances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Comprehensive Drug Abuse Prevention and Control Act of 1970 (83

Stat. 1236), Reorganization Plan No. 2 of 1973, the Omnibus Crime Control and Safe Streets Act, (Pub. L. 90–351, as amended), and the Single Convention on Narcotic Drugs (18 U.S.C. 1407). Additional authority is derived from Treaties, Statutes, Executive Orders, Presidential Proclamations, and Attorney General Directives.

PURPOSE(S):

Records in this system are used to provide clandestine laboratory seizure information for the Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(3), relevant records or any relevant facts derived therefrom may be disclosed :

(a) To federal, state, and local law enforcement agencies to facilitate the investigation and prosecution of illegal drug trafficking activities.

(b) To individuals and organizations in the course of investigations where necessary to elicit information pertinent to counter-drug, weapons, alien, and drug-money investigations.

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority in accordance with applicable regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) In the event that a record in this system, either alone or in conjunction with other information indicates a violation or potential violation of the law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(g) Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(h) A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) and the General Services Adminstration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

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

STORAGE:

Data is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, compact discs, magnetic tape, and/or optical disks. The records are stored on computer at the El Paso Intelligence Center, El Paso, Texas. Paper files are stored as follows: (1) In a secure file room with controlled access; (2) in locked file cabinets; and/or (3) in other appropriate GSA approved security containers.

RETRIEVABILITY:

Records may be retrieved by reference to an individual's name or personal identifier, name of organization, location of laboratory, date of seizure, type of chemical, and DEA investigative file number.

SAFEGUARDS:

Both electronic and paper records are safeguarded in accordance with DOJ rules and policy governing automated systems security and access. These safeguards include the maintenance of technical equipment in restricted areas, and the required use of individual passwords and user identification codes to access the system. The EPIC CLSS database is protected by both physical security methods and dissemination and access controls. Protection of the automated information system is provided by physical, procedural and electronic means.

RETENTION AND DISPOSAL:

Records in the manual portion of the system are destroyed after two years. The automated intelligence information is stored on computer and destroyed five (5) years after the date of last update of the record. The automated investigative information is destroyed twenty-five years after the date of last update, as approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Director, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, Texas, 79912–8098.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to Freedom of Information and Records Section, Drug Enforcement Administration, Washington, DC 20537.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the Freedom of Information Act (FOIA)/Privacy Act (PA) Section, Headquarters, Drug Enforcement Administration, Washington, DC 20307 or to the System Manager, with the envelope and letter clearly marked ''Privacy Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury and dated. Some information may be exempt from access to certain provisions as described in the section entitled ''Systems Exempted from Certain Provisions of the Act.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment. Some

information may be exempt from contesting record procedures as described in the section entitled ''Systems Exempted from Certain Provisions of the Act.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

(1) DEA intelligence and investigative records; (2) reports, investigative and intelligence reports from other participating and associated federal and state member agencies; and (3) records and reports of foreign law enforcement and regulatory agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5) and (e)(8); and (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 03–1671 Filed 1–24–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2229–02; AG Order No. 2651–2003]

RIN 1115—AE26

Termination of Designation of Angola Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's most recent designation of Angola under the Temporary Protected Status program (TPS) expires on March 29, 2003. After reviewing country conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in Angola no longer support a TPS designation. Accordingly, the designation of Angola for TPS is terminated effective March 29, 2003. After that date, aliens who are nationals of Angola (and aliens having no nationality who last habitually resided in Angola) who have had TPS under the Angola program will no longer have such status. This notice contains information regarding the termination of the TPS designation for Angola.

DATES: The termination of the TPS designation for Angola is effective March 29, 2003.

FOR FURTHER INFORMATION CONTACT: Naheed A. Qureshi, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Termination of TPS?

Under section 244 of the Immigration and Nationality Act (INA or ''the Act''), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part of a state) for TPS. The Attorney General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3) of the Act further requires the Attorney General to determine whether the conditions for such a designation continue to be met, and to terminate the state's designation when the Attorney General determines conditions are no longer met. 8 U.S.C. 1254a(b)(3)(B). The Attorney General must then publish a notice of termination in the **Federal Register**.

Why Did the Attorney General Decide To Terminate TPS for Angola?

On March 29, 2000, the Attorney General published a notice in the **Federal Register** at 65 FR 16634 designating Angola for TPS for a period of one year, based upon conditions in Angola at that time. That TPS designation was extended twice and is scheduled to expire on March 29, 2003. *See* 66 FR 18111 (April 5, 2001 (extension and redesignation); 67 FR 4997 (Feb. 1, 2002) (extension). Based upon a recent review of conditions within Angola by the Departments of Justice and State, the Attorney General finds that conditions in Angola no longer support a TPS designation.

A recent Department of State report indicates that the National Union for the Total Independence of Angola (UNITA) and the Government of Angola were able to recommit to the Lusaka Peace Process following the February 2002 death of rebel leader Jonas Savimbi. Department of State Report (Nov. 13, 2002). The Resource Information Center (RIC) of the Immigration and Naturalization Service (INS/Service) observed that ''[t]he peace accords ended the 27-year battle between the UNITA forces and the Angolan ruling party.'' RIC Report (Nov. 29, 2002). The peace agreement committed the parties to continued discussions regarding future elections and a power sharing approach to governance. Since the peace accord was signed, fighting has ceased and 84,000 UNITA combatants have been disarmed and decommissioned, effectively dismantling UNITA's military capability. Department of State Report. The United Nations estimates that approximately 5,000 of the demobilized soldiers have joined the Angolan government forces, while approximately 80,000 have reunited with their families in reception centers. RIC Report.

A separate insurgency led by the separatist guerrilla forces of the Front for the Liberation of the Enclave of Cabinda/Armed Forces of Cabinda (FLEC/FAC) continues in the northern province of Cabinda, and the Angolan Armed Forces has increased its military campaign against rebels in this area. Given the geographic isolation of Cabinda from the rest of Angola, however, the Department of State concludes that conditions in that province do not impact Angolans elsewhere. Department of State Report.

The Department of State report notes that in addition to the humanitarian needs of 380,000 UNITA members and their families, the Government of Angola faces the challenge of assisting an estimated 4 million displaced Angolan nationals. The RIC Report expresses concern that Angola lacks housing, medical services, water systems, and other basic services destroyed by a 27-year-long war.

There are as many as 8 million landmines planted in Angolan soil. Department of State Report. At least 10 provinces, accounting for 40 percent of Angola's countryside, are heavily mined, rendering large areas of arable land and pasture unfit for use. RIC Report. Nevertheless, the Department of State concludes that the risks associated with existing landmines are not sufficient to potential returnees to warrant an extension of TPS.

Despite these challenging circumstances, the United Nations High Commissioner for Refugees (UNHCR)

estimates that 70,000 refugees and 860,000 internally displaced persons have spontaneously returned to their home areas since February 2002. Department of State Report. In the spring of 2003, UNHCR intends to begin the organized repatriation of 470,000 refugees from Zambia, the Democratic Republic of Congo and Namibia. *Id.* The Government of Angola continues to work with the international community to return 4 million internally displaced persons to their homes in Angola.

Based on these findings, the Attorney General has determined that conditions warranting TPS designation no longer exist, and that the TPS designation for Angola must be terminated. Section 244(b)(3)(B) of the Act provides that the Attorney General ''shall'' terminate a designation if he determines that Angola ''no longer continues to meet the conditions for designation * * *'' A statutory condition common to designations under paragraphs (A) and (C) of section 244(b)(1) of the Act is a threat to the personal safety of potential returnees. Whether the precipitating condition is an ''ongoing armed conflict,'' INA § 244(b)(1)(A), or other ''extraordinary and temporary conditions,'' INA § 244(b)(1)(C), this shared condition—threat to returnees' safety—must ''continue to be met'' or the Attorney General ''shall'' terminate the designation. INA §§ 244(b)(3)(A), (B). The disarmament, demobilization, and ongoing reintegration of ex-combatants, the formal end to war, and the discussions regarding planned elections are all positive developments and an indication that internal armed conflict no longer threatens returning Angolans. Furthermore, efforts by the United Nations and non-governmental organizations to resettle Angolan citizens signify the improvement of humanitarian and socioeconomic conditions in Angola. For the foregoing reasons, the Attorney General determines that Angolan TPS beneficiaries may return safely to Angola at this time and, therefore, terminates the TPS designation for Angola.

What May I Do if I Believe That My Return to Angola Is Unsafe?

This notice terminates the designation of Angola for TPS. There may be avenues of immigration relief and protection available to aliens who are nationals of Angola (and aliens having no nationality who last habitually resided in Angola) in the United States who believe that their particular circumstances make return to Angola unsafe. Such avenues may include, but are not limited to, asylum, withholding of removal, or protection under Article 3 of the Torture Convention.

How Does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Angola for TPS is terminated on March 29, 2003, former TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to receiving TPS benefits and did not obtain any other status during the TPS period, he or she will maintain that unlawful status upon the termination of the TPS designation.

Former TPS beneficiaries will no longer be eligible for a stay of removal or a work authorization document pursuant to the TPS program. TPS-related work authorization documents expire on March 29, 2003, and will not be renewed.

Termination of the TPS designation for Angola does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of March 29, 2003, if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits.

Notice of Termination of Designation of Angola Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of government concerning conditions in Angola. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Angola no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. *See* 8 U.S.C. 1254a(b)(1).

Accordingly, I order as follows:

(1) The designation of Angola for TPS under section 244(b) of the Act is terminated effective March 29, 2003.

(2) I estimate that there are approximately 316 nationals of Angola (and aliens having no nationality who last habitually resided in Angola) who currently receive TPS benefits.

(3) Information concerning the termination of the TPS program for nationals of Angola (and aliens having no nationality who last habitually resided in Angola) will be available at local Service offices upon publication of this notice and through the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS web site at *http://www.ins.usdoj.gov.*

Dated: January 23, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–1994 Filed 1–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Double M Mining, Inc.

[Docket No. M–2002–123–C]

Double M Mining, Inc., P.O. Box 14, Rt. 624, Amonate, Virginia 24610 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) at its Auger #2 Mine (MSHA I.D. No. 46–08915) located in McDowell County, West Virginia. This standard requires refuse piles constructed on or after July 1, 1971, to be located in areas that are a safe distance from all underground mine airshafts, preparation plants, tipples or other surface installations and such piles shall not be located over abandoned openings or streamlines. The petitioner proposes to cover the coal seam with inert material, backfill and eliminate the highwall with refuse on a 2 to 1 slope and cover with soil in order to reclaim the site. The petitioner states that: (i) The face up and the adjacent areas of the mine have been augered and the areas now needs to be reclaimed; (ii) that there will be no mine drainage from the mine openings in the area because the original mine entries were developed down dip and seals have been built that isolate the active mining from the area to be reclaimed from the active mining of the Vica Coal Company who is mining from a different set of portals. The petitioner further states that the Auger #2 Mine was faced up in the area of an old refuse pile by removing the refuse and then taking a small cut to create the highwall. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Freeman United Coal Company

[Docket No. M–2002–124-C]

Freeman United Coal Company, P.O. Box 4630, Springfield, Illinois 62708

has filed a petition to modify the application of 30 CFR 75.1101–8(a) (Water sprinkler system; arrangement of sprinklers) at its Crown II Mine (MSHA I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner proposes to provide a fireproof electrical enclosure and fire detection system in lieu of a sprinkler over the electrical control. The petitioner states that the Crown II Mine is a large underground mine employing three operating sections to develop entrees and rooms with remote control continuous miners and the belt system utilizes ten belt drives. The petitioner further states that: (i) The belt drives and electrical controls are ventilated with isolated intake air; (ii) the electrical control boxes do not contain flammable fluids or other flammable products and are fully enclosed with fireproof construction and are located at least two-feet from coal or other combustible material; and (iii) the electrical cables will conform with the requirements of part 18, and a heat sensor or CO monitor will be installed near the electrical control box. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Rustler Coal Company

[Docket No. M–2003–001–C]

Rustler Coal Company, 273 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) at its Orchard Slope Mine (MSHA I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. KenAmerican Resources, Inc.

[Docket No. M–2003–002–C]

KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) at its Paradise #9 Mine (MSHA I.D. No. 15–17741) located in Muhlenburg County, Kentucky. The petitioner proposes to equip its diesel grader with a device that will limit the speed of the grader to 10 miles per hour, and provide training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and stop the grader. The petitioner asserts that application of the standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Anita Mining Company

[Docket No. M–2003–003–C]

Anita Mining Company, One Energy Place, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) at its Ondo Extension Mine (MSHA I.D. No. 36–09005) located in Indiana County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for fire fighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) portable fire extinguishers in lieu of using 240 pounds of rock dust at all temporary electrical installations at the Ondo Extension Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before February 26, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 17th day of January 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–1680 Filed 1–24–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 3, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

2. *Date:* February 10, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

3. *Date:* February 19, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

Daniel Schneider,
Advisory Committee Management Officer.
[FR Doc. 03–1717 Filed 1–24–03; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.
ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko, Acting Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 4, 2002, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on January 6, 2003 to: William Gilmore, Permit No. 2003–016.

Joyce A. Jatko,
Acting Permit Officer.
[FR Doc. 03–1759 Filed 1–24–03; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.
ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 26, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty with respect to the conservation of Antarctic animals and plants in the Code of Federal Regulations Part 670. The regulations establish a permit system for certain actions which would otherwise be prohibited, including the introduction of non-indigenous species into Antarctica.

The applications received are as follows:

1. Applicant

H. William Detrich, Department of Biology, Northeastern University, 414 Mugar Hall, Boston, MA 02215.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. The applicant proposes using frozen fish tissues from species native to Patagonian Chile as bait (mixture of *Macruronis magellanicus* and *Dissostichus eleginoides*) in fishing traps/pots in the Antarctic Peninsula. The specimens collected will be taken to the Palmer Station aquarium facilities and used to study the biochemistry and molecular biology of Antarctic fishes. The applicant proposes to fish a maximum of 20 traps and estimates using a maximum of 20 blocks of frozen fish bait (10–15 kg).

Location

Antarctic Peninsula area in the vicinities of Low, Brabant, and Livingston Islands, as well as Dallman Bay.

Dates

April 5, 2003 to August 30, 2005.

Joyce A. Jatko,
Acting Permit Officer, Office of Polar Programs.
[FR Doc. 03–1760 Filed 1–24–03; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Firstenergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its July 26, 1999, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Technical Specifications pertaining to the Safety Features Actuation System Instrumentation trip setpoints.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 8, 1999 (64 FR 48862). However, by letter dated December 20, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 26, 1999, and the licensee's letter dated December 20, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of January 2003.

For the Nuclear Regulatory Commission.

Jon Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1749 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its October 9, 2001, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Technical Specifications regarding surveillance testing of the Steam and Feedwater Rupture Control System instrumentation to decrease the frequency of functional testing and to revise setpoint allowable values accordingly.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 26, 2001 (66 FR 66466). However, by letter dated December 20, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 9, 2001, and the licensee's letter dated December 20, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January 2003.

For the Nuclear Regulatory Commission.

Jon Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1750 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to the Nuclear Management Company, LLC, for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

The proposed amendment would revise the operating license to authorize changing the design bases and the Updated Safety Analysis Report (USAR) based upon revised analyses of (1) the long-term containment response to a design-basis loss-of-coolant accident (LOCA) and (2) containment pressure required for adequate net positive suction head (NPSH) for the residual heat removal (RHR) pumps and core spray pumps following a LOCA. The revised analyses incorporate revised inputs, assumptions, alternative scenarios, and different analytical methods and results from those currently described in the USAR and previously approved by the Nuclear Regulatory Commission in Monticello License Amendment Nos. 98 (dated July 25, 1997) and 102 (dated September 16, 1998). These changes include additional contributions to, and allowance for error in, (1) the reactor decay heat input; (2) longer delays in initiating long-term containment cooling for reactor isolation and small-break events; (3) improved credit (K-value of 147 Btu/sec-°F rather than 143.1 Btu/sec-°F) for RHR heat exchanger performance; and (4) a slightly higher design temperature limit (196.7 °F rather than 195 °F) for piping attached to the wetwell based on revised calculations of wetwell pressure and a corresponding increase in allowable service water temperature. The revised results reduce (from 18.26 psia to 17.51 psia) the overpressure credit needed for adequate NPSH (*i.e.*, the revised analysis of long-term wetwell pressure response to a design-basis LOCA with containment spray cooling results in a wetwell pressure below the previous NRC-approved limit curve during the period from 2000 to 4000 seconds).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 26, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

[1] ''The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.''

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to J. E. Silberg, Shaw, Pittman, Potts and Towbridge, 2300 N. Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 6, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January, 2003.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1748 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Termination of Uranium Milling Licenses in Agreement States; Notice of Availability of Final Revision of NRC Procedure, and Analysis of Public Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of a final revision of the Office of State and Tribal Programs (STP) Procedure SA–900: ''Termination of Uranium Milling Licenses in Agreement States,'' and an analysis of comments: ''Responses to Comments on the Draft Revision of STP Procedure SA–900.'' The procedure describes the NRC review process for making determinations that all applicable standards and requirements have been met prior to Agreement State uranium milling license termination.

ADDRESSES: Electronic copies of the documents are available for public inspection in the NRC Public Document Room or from the Public Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). The final revised STP Procedure SA–900 and the analysis of comments are under Adams Accession Number ML030170429. The final revised STP Procedure SA–900 is also available on the NRC STP external Web site at: *http://www.hsrd.ornl.gov/nrc/procedures/sa900.pdf*.

FOR FURTHER INFORMATION CONTACT: Kevin Hsueh, Mail Stop: O–3C10, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–2598, or E-mail *KPH@NRC.GOV*.

SUPPLEMENTARY INFORMATION: On March 29, 2001, the NRC published a notice in the **Federal Register** (66 FR 17206) announcing the formation of a Working Group composed of representatives from the NRC and Agreement States. The Working Group was tasked to identify areas that need improvements in the NRC concurrence process for uranium milling license termination in Agreement States, and propose a draft revised procedure that addresses issues identified by the Working Group and stakeholders.

The Working Group, consisting of five representatives from the Agreement States, three NRC representatives and an NRC resource representative, began work in April 2001. The Working Group held four teleconference calls and one public meeting with stakeholders in 2001. A draft revised STP Procedure SA–900, prepared by the Working Group, was published for public comment on August 23, 2001 in the **Federal Register** (66 FR 44389).

Based on the Working Group's evaluation and discussions, comments provided during the teleconference calls and the meeting with stakeholders, and comments received on the draft revised Procedure SA–900, the Working Group prepared and issued a final report in July 2002.

The final report includes a revised STP Procedure SA–900 and an analysis of public comments on the 2001 publication of the draft procedure.

Subsequently, on October 4, 2002, NRC published a notice in the **Federal Register** (67 FR 62274) announcing the availability of, and providing opportunity for comments on the revised STP Procedure SA–900, prepared by the Working Group. The NRC has prepared an analysis of public comments on the draft procedure: ''Response to Comments on Draft Revision of STP Procedure SA–900.'' All comments received have been considered in preparation of the final procedure. The final STP Procedure SA–900 was issued on December 31, 2002.

Dated at Rockville, Maryland this 17th day of January, 2003.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Deputy Director, Office of State and Tribal Programs.

[FR Doc. 03–1751 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 23, 2003, Public Hearing

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (volume 68, number 4, page 816) on January 7, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's January 30, 2003, Board of Directors meeting scheduled for 1 p.m. on January 23, 2003, has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: January 22, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–1888 Filed 1–23–03; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval (with modifications).

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval (with modifications) of a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 26, 2003.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC is requesting that OMB extend its approval (with modifications) of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. The collection also includes pages on the PBGC's web site, www.pbgc.gov, that, for certain large plans, provide respondents with specific information about their pension plan and enable them to obtain a rough estimate of their benefit, either by using an online benefit estimate calculator or by completing an online form and submitting it to the PBGC to compute an estimate. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments or to provide respondents with specific information about their pension plan and enable them to obtain a rough estimate of their benefit.

The existing collection of information was approved under control number 1212–0055 (expires February 28, 2003).

The PBGC estimates that 134,950 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 76,200 hours (an average of about one-half hour per response) and $49,931.50 (an average of $.37 per response). The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,500 hours (an average of about one-quarter hour per response) and $1,100 (an average of $.20 per

response). Thus, the total estimated annual burden associated with this collection of information is 77,700 hours and $51,041.50.

Issued in Washington, DC, this 22nd day of January, 2003.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–1765 Filed 1–24–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires February 28, 2003). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 26, 2003.

ADDRESSES: Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through February 28, 2003, by OMB under control number 1212–0013. The PBGC is requesting that OMB extend its approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 537 reportable events notices per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2,260 hours and $452,000.

Issued in Washington, DC, this 22nd day of January, 2003.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–1766 Filed 1–24–03; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on responders, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Railroad Service and Compensation Reports; OMB 3220–0008.

Under section 6 of the Railroad Unemployment Insurance Act (RUIA) and section 9 of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employees for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in section 6 of the RRA and section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6. The RRB utilizes form BA–3a, Annual Report of Compensation and form BA–4, Report of Creditable Compensation Adjustments, to secure the required information from railroad employers. Form BA–3a provides the RRB with information regarding annual creditable service and compensation for each individual who worked in the railroad industry in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted.

Employers currently have the option of submitting the reports on the aforementioned forms, or, in like format, on magnetic tape, tape cartridges, PC diskettes, or CD–ROM as outlined in the RRB's Reporting Instructions to Employers. Submission of the reports is mandatory. One response is required of each respondent. Minor editorial changes are proposed to form BA–3a and BA–4.

In addition, in accordance with the Government Paperwork Elimination Act which requires Federal agencies to provide its customers the option to submit or transact business with agencies electronically, when practical, as a substitute for paper by October 21, 2003, the RRB proposes the addition of a new equivalent Internet version of form BA–4, Report of Creditable Compensation Adjustments, to the information collection.

The completion time for form BA–3a is estimated at between 33.3 hours per response for electronic submissions to 85 hours for manual paper responses. The completion time for form BA–4 is estimated at between 45 and 60 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–1764 Filed 1–24–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–8, SEC File No. 270–421, OMB Control No. 3235–0481.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• *Rule 15c2–8 Delivery of Prospectus*

Rule 15c2–8 requires broker-dealers to deliver preliminary or final prospectuses to specified persons in association with securities offerings. This requirement ensures that information concerning issuers flows to purchasers of the issuers' securities in a timely fashion. There are approximately 8,000 broker-dealers, any of which potentially may participate in an offering subject to rule 15c2–8. The Commission estimates that rule 15c2–8 creates approximately 10,600 burden hours with respect to 120 initial public offerings and 460 other offerings.

Written 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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 17, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1700 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27640]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 21, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 14, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 14, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy Inc. (70–10109)

Notice of Proposed Charter Amendment To Eliminate Preemptive Rights of Stockholders and Order Authorizing Solicitation of Proxies In Connection With the Proposed Amendment

Allegheny Energy Inc. (''Allegheny''), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company under the Act, has filed a declaration (''Application'') under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 under the Act.

Allegheny seeks authorization to: (i) Amend its charter (''Charter'') to eliminate preemptive rights of stockholders and (ii) solicit proxies in connection with the proposed charter amendment.

Allegheny proposes to amend its Charter to eliminate any preemptive right of stockholders to subscribe for newly issued securities of Allegheny. Under Maryland law, a preemptive right is the preferential right of existing stockholders to purchase any issuance of stock or any issuance of a security convertible into an additional issuance of stock. Preemptive rights do not accrue unless expressly granted in a charter. Under the existing provisions of the Charter, stockholders of Allegheny possess preemptive rights to purchase, on a *pro rata* basis, any new issuance by Allegheny in a non-public offering for money, of common stock or securities convertible into common stock of Allegheny. On December 5, 2002, the Board of Directors of Allegheny unanimously approved resolutions proposing to amend and restate article VII of the Charter to provide that preemptive rights shall not exist with respect to Allegheny's securities. It is proposed that the current article VII, section B of the Charter be deleted and a new article VII, section B be inserted

so that article VII, section B of the Charter as amended shall read in full and in its entirety as follows:

B. No holder of Common Stock shall be entitled to preemptive rights and preemptive rights shall not exist with respect to shares or securities of the Corporation.

The affirmative vote of a majority of all the votes entitled to be cast is required for the approval of the proposal.

Allegheny states that elimination of preemptive rights will give the Board of Directors of Allegheny greater flexibility and reduce the cost of financings, such as the sale through private placements of new shares of common stock or senior securities convertible into common stock. The company states that the preemptive rights provision in the Charter serves as a significant impediment to any private sale of equity securities for cash to institutional or strategic investors. These types of issuances of equity can be important in times like these when both Allegheny and the capital markets, at least for energy companies, are under great stress, Allegheny states.

Allegheny would like to submit the proposed amendments to its Charter as described in this Application to stockholders and to solicit proxies from stockholders at a special meeting during the first quarter of 2003. Adoption of the proposed amendments will require the affirmative vote of the holders of a majority of the outstanding shares of Allegheny's common stock entitled to vote at the special meeting.

The cost of the solicitation of proxies will be borne by Allegheny. In addition to the solicitation of proxies by use of the mails, Allegheny, or its subsidiaries, may use the services of its officers, directors and regular employees (none of whom will receive any compensation other than their regular compensation) to solicit proxies, personally or by telephone. Arrangements may also be made with banks, brokerage houses and other custodians, nominees and fiduciaries to forward the proxy materials to the beneficial owners, and Allegheny may reimburse such banks, brokerage houses, custodians, nominees and fiduciaries for reasonable expenses. Allegheny has hired MacKenzie Partners, Inc. to assist in soliciting proxies and has agreed to pay a customary fee for these services, in addition to expenses incurred in connection with the solicitation of proxies.

The following estimated fees and expenses, including expenses of the special meeting of stockholders, are expected to be incurred by Allegheny in connection with the proposed proxy solicitation and special meeting: Proxy Solicitation, $50,000; Printing, $15,000; Mailings, $100 to $150,000; Legal Fees, $100,000. The total estimated fees and expenses are $265,000 to $315,000.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Allegheny has requested that an order be issued authorizing the solicitation of proxies from shareholders in connection with the proposed Charter amendment. It appears to the Commission that Allegheny's declarations regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies from Allegheny shareholders in connection with the proposed Charter amendment become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1701 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25907; 812–12730]

System Capital Corporation and Golden Funding Corporation; Notice of Application

January 21, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from all provisions of the Act.

Summary of Application: Applicants request an order that would permit Golden Funding Corporation (''Golden Funding'') to sell securities and use the proceeds to finance the business activities of its parent company, System Capital Corporation (''SCC''), and certain companies controlled by SCC (''Controlled Companies'').

Applicants: SCC and Golden Funding.

Filing Dates: The application was filed on December 18, 2001, and amended on January 16, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 18, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 676 N. Michigan Avenue, Suite 3650, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel (202) 942–0646, or Janet M. Grossnickle, Branch Chief (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. SCC, a Delaware corporation, is a holding company for subsidiaries that provide financing to the restaurant system operated by McDonald's Corporation (''McDonald's'') and its owner/operators and suppliers (the ''McDonald's Restaurant System''). SCC currently conducts its activities through three types of wholly-owned subsidiaries: (i) The Controlled Companies which provide financing for specific operations of the McDonald's Restaurant System, (ii) Golden Funding, which provides financing to the Controlled Companies, and (iii) System Capital Credit Corporation (''Credit''), which provides various credit support and financial services to Golden Funding, the Controlled Companies and other lenders to the McDonald's Restaurant System. Applicants state that SCC is not an investment company as defined in section 3(a) of the Act.

2. Golden Funding, a Delaware corporation, is a wholly-owned subsidiary of SCC whose primary purpose is to finance the activities of the Controlled Companies by issuing securities and by obtaining secured and unsecured loans pursuant to various credit and liquidity facilities. The debt

securities issued by Golden Funding include commercial paper, medium-term notes, and may include extendible maturity commercial paper (collectively, the ''Securities''). The Securities are offered and sold under an exemption from registration provided by section 4(2) of the Securities Act of 1933 (''Securities Act'') and are eligible for resale only to ''qualified institutional buyers'' under rule 144A of the Securities Act that are also ''qualified purchasers'' under the Act. Golden Funding also may borrow from banks and issue other debt securities or preferred stock in the United States pursuant to a registration statement or an applicable exemption from registration under the Securities Act. Golden Funding will comply with the applicable requirements in rule 3a–5(a)(1) through (4) and with rule 3a–5(b)(1)(i).

3. Golden Funding uses the proceeds from the Securities and loans to make loans to the Controlled Companies.[1] Each Controlled Company uses the proceeds of the loans to provide financing for a distinct segment of the McDonald's Restaurant System, either by purchasing accounts receivable or originating loans or leases to McDonald's or McDonald's Restaurant System participants. Applicants state that each of the Controlled Companies relies, or upon its formation will rely, on section 3(c)(5) of the Act for exclusion from regulation as an investment company under the Act.

4. Applicants state that in compliance with rule 3a–5(a)(5) under the Act, Golden Funding uses at least 85% of any cash or cash equivalents it raises to make loans to the Controlled Companies as soon as practicable, but in no event later than six months after Golden Funding's receipt of the cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by Golden Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the Securities Act.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act exempting Golden Funding from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the Act for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) under the Act, in relevant part, defines a ''company controlled by the parent company'' to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. Applicants state that the Controlled Companies do not fit within the definition of ''company controlled by the parent company'' because they derive their non-investment company status from section 3(c)(5) of the Act. Accordingly, Applicants request exemptive relief to permit Golden Funding to issue and sell Securities to finance the operations of SCC and the Controlled Companies. Applicants state that neither SCC, Golden Funding nor the Controlled Companies engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Golden Funding will comply with all of the provisions of rule 3a–5 under the Act, except Golden Funding will be permitted to make loans to or make or hold investments in Controlled Companies that do not meet the portion of the definition of ''company controlled by a parent company'' in rule 3a–5(b)(3)(i) under the Act solely because they are excluded from the definition of investment company under section 3(c)(5) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1757 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] Golden Funding also may from time to time make advances to Credit, which is a ''company controlled by the parent company,'' as that term is defined in rule 3a–5(b)(3).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Emission Controls Corporation; Order of Suspension of Trading

January 23, 2003.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of adequate and accurate information concerning the management, business practices, and results of operations of Emission Controls Corporation (''Emission Controls''). The securities of Emission Controls are quoted on the OTC Pink Sheets under the symbol EMCS. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of Emission Controls' publicly disseminated information concerning, among other things, Emission Controls' products and business prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Emission Controls.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Emission Controls is suspended for the period from 9:30 a.m. e.s.t. January 23, 2003, through 11:59 p.m. e.s.t., on February 5, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1878 Filed 1–23–03; 12:43 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47200; File No. SR–CBOE–2002–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Proposing To Allow Limited Side-by-Side Trading and Integrated Market Making for Certain Securities and Their Related Options

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 27, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on January 2, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Exchange rules and the related Interpretations and Policies to allow for limited ''Side-by-Side Trading'' [5] and ''Integrated Market Making'' [6] for certain securities and their related options. The text of the proposed rule change follows. Additions are in *italics.* Deleted text is in [brackets].

* * * * *

Chapter XXX

Part A—Trading in Stocks, Warrants, and Other Securities

General Floor Prohibitions

Rule 30.18. No member of the Exchange, while on the floor, shall:

(a) Dealing When Option Granted or Held. *Except as otherwise provided in Section (d) below,* [I]*i*nitiate the purchase or sale on the Exchange of any security subject to the Rules in this Chapter, for his own account or for any account in which he, his member organization or any person associated with such member or member organization is directly or indirectly interested, including by means of the issuance or acceptance of a commitment or obligation to trade, where (i) such member holds, or has sold or granted, an option or warrant on that security, or (ii) such member has knowledge that his member organization or any person associated with such member or member organization holds, or has sold or granted, any such option or warrant; or

(b) No change.

(c) No change.

(d) Notwithstanding the foregoing:

(i) The DPM or an associated person of the DPM for an IPR, IPS, or TIR that meets the criteria set forth in Interpretation and Policy .03 of this Rule may act as a DPM, market-maker, and/or floor broker in the related options without implementing procedures to restrict the flow of information between them and without any physical separation between the trading in the underlying IPR, IPS, or TIR and the trading in the related options.

(ii) Reserved.

* * *Interpretations and Policies

.01 No change.

.02 No change.

.03 *The criteria to qualify particular IPRs, IPSs and TIRs for side-by-side trading and integrated market making pursuant to Exchange Rule 30.18(d)(i) are as follows:*

a. *Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.*

b. *The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.*

c. *The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.*

d. *The underlying portfolio must include a minimum of 13 securities.*

e. *All securities in the portfolio must be listed on a national securities exchange or the NASDAQ Stock Market.*

Chapter 30

30.18A. An option DPM that is also approved as a DPM in the underlying security in a side-by-side trading environment pursuant to Exchange Rule 30.18(d)(i) is required to disclose on request to all participants in the option or security trading crowds information about aggregate buying and selling interest at different price points represented by limit orders then being represented or otherwise held by the DPM.

* * *Interpretations and Policies

.01. ''Side-by-side trading'' refers to the trading of options and their underlying securities in the same physical vicinity, though not necessarily by the same DPM or firm.

.02. Notwithstanding the fact that a DPM's option transactions may be in conformity with Rule 30.18 and its Interpretations and Policies, such DPM shall nonetheless be deemed to be in violation of Rule 30.18 if the DPM has engaged in such option transactions for manipulative purposes.

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 27, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1''). In Amendment No. 1, the Exchange withdrew the portion of the proposed rule change to permit limited integrated market making of securities admitted to dealings on an UTP basis and their related options if information barriers are established, approved and maintained. In addition, the Exchange amended the proposal to designate the proposed rule change as filed under section 19(b)(3), rather than section 19(b)(2), of the Act.

[4] *See* letter from Christopher Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 30, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange provided reasons for requesting that the Commission waive the 5 day pre-filing requirement and the 30 day delay of the operative date as required under section 19(b)(3) of the Act, and Rule 19b–4(f)(6) thereunder.

[5] The Exchange defines ''Side-by-Side Trading'' as the trading of options and their underlying stocks in the same vicinity, though not necessarily by the same DPM or firm.

[6] The Exchange defines ''Integrated Market Making'' as the trading of options and their underlying stocks by the same DPM.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since at least the 1980s,[7] the Commission has expressed concerns regarding potential information advantages and potential opportunities for manipulation that might occur if specialists and market makers could engage in side-by-side trading and integrated market making.

In October of 1990, the Commission approved CBOE rules governing the trading of stocks, warrants, and other securities at CBOE (which are now set forth in Chapter 30 of the CBOE's Rules).[8] During the process of obtaining this approval, CBOE noted to the Commission that no side-by-side trading of stocks and stock options would occur on the same floor, and agreed to submit a proposed rule change under section 19(b) of the Act [9] to the Commission ''prior to any modification to its plan to trade stocks in a separate location from the options trading floor.'' [10] In addition, Exchange Rule 30.18(a), as proposed by the CBOE and approved by the Commission, was ''intended to prevent a member from buying or selling an underlying stock on the CBOE when the member or an affiliate has a position in an option or warrant on that security.'' [11]

Since that time, the core of the CBOE's business has remained primarily in listed options on equities and stock indexes. In recent years, however, the CBOE, in addition to its existing listed options business, has also come to trade a number of products that derive their value from portfolios of other equity securities. These products include among others, Index Portfolio Receipts (''IPRs'')[12] and ''Index Portfolio Shares (''IPSs''),[13] which are sometimes collectively referred to as Exchange-Traded Funds (''ETFs''),[14] as well as Trust Issued Receipts (''TIRs'').[15]

More recently, the Commission approved the American Stock Exchange LLC (''Amex'') filing SR–Amex–2002–21, which authorized the Amex to permit limited integrated market making in its stocks that trade pursuant to unlisted trading privileges (''UTP'') and their related options, as well as both integrated market making and side-by-side trading in certain ETF shares and TIRs and their related options.[16]

CBOE expressed concerns about the Amex proposal for side-by-side trading set forth in SR–Amex–2002–21 and the earlier SR–Amex–2001–75.[17] Furthermore, the CBOE belives the Commission's recent approval of SR–AMEX–2002–21, including both the ability to undertake limited side-by-side trading as well as limited integrated market-making, gives substantial competitive advantages to the Amex. Thus, in the interests of promoting a fair and competitive marketplace, the CBOE proposes to undertake integrated market making and side-by-side trading of ETFs and their related options to the same extent that the Commission has approved for the Amex.

Specifically, CBOE proposes to permit side-by-side trading and integrated market making of certain ETFs and TIRs and their related options, if the ETF or TIR meets the criteria set forth in Interpretation and Policy .03 to CBOE Rule 30.18.[18] Specifically, CBOE proposes to permit DPMs and market makers in options on ETF shares and TIRs that meet the criteria set forth in the proposed new Interpretation and Policy .04 to CBOE Rule 30.18 to also act as the DPM and market makers, respectively, in the underlying securities without information barriers or physical barriers. CBOE also proposes new CBOE Rule 30.18A to require a DPM in options on an ETF or TIR that is also the DPM in the underlying security in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option held by the DPM.

The CBOE notes that it remains concerned about the potential impact of any further expansion of side-by-side trading. While the Commission's approval of SR–Amex–2002–21 compels the CBOE to make this proposed rule change for competitive reasons, CBOE represents that this proposal seeks no more side-by-side trading than what the Commission has approved for the Amex in SR–Amex–2002–21.

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[7] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556).

[8] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990) (approving SR–CBOE–90–08).

[9] 15 U.S.C. 78s.

[10] *See id*. at 16 and nn. 30–31 (citing letter from Robert Ackerman, Vice President, CBOE, to Howard Kramer, Assistant Director, Division, Commission, dated October 15, 1990).

[11] *See* Securities Exchange Act Release No. 30068 (December 12, 1991), 56 FR 65764 (December 18, 1991) (approving File No. SR–CBOE–91–45).

[12] As set forth in Interpretation .02 to CBOE Rule 1.1, the term index portfolio receipts or ''IPRs'' means securities that (a) represent an interest in a unit investment trust (''Trust'') which holds the securities that comprise an index on which a series of IPRs is based; (b) are issued by the Trust in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount; (c) when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the Portfolio Deposit; and (d) pay holders a periodic cash payment corresponding to the regular cash dividends or distributions declared and paid with respect to the component securities of the stock index on which the IPRs are based, less certain expenses and other charges as set forth in the Trust prospectus. IPRs are ''UIT interests'' within the meaning of the Rules of the Exchange.

[13] As set forth in Interpretation .03 to CBOE Rule 1.1, the term ''Index Portfolio Shares'' or IPSs means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash with a value equal to the next determined net asset value.

[14] For ease of reference, this rule filing uses the term Exchange-Traded Fund, or ETF, to describe both IPRs and IPSs. Currently, the Exchange trades the following ETFs listed on the CBOE pursuant to CBOE Rule 31.5(L)–(M); the Nasdaq 100® Index Tracking Stock (''QQQ''), the Standard & Poor's® Depository Receipts (SPY–SPDRs®), and the S&P 100 iShares℠ (''OEF''). *See* email from Christopher Hill, Attorney, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated November 12, 2002.

[15] As set forth in Interpretation and Policy .04 to CBOE Rule 1.1, the term ''Trust Issued Receipt'' means a security (a) that is issued by a trust (''Trust'') which holds specific securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. TIRs are listed on the CBOE pursuant to CBOE Rule 30.57.

[16] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (approving SR–Amex–2002–21).

[17] *See* letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan Katz, Secretary, Commission, dated July 11, 2002.

[18] The criteria for ETFs and TIRs set forth in the proposed Interpretation and Policy .03 to Rule 30.18 to qualify particular ETFs and TIRs for side-by-side trading and integrated market making are as follows:

(a) Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.

(b) The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

(c) The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.

(d) The underlying portfolio must include a minimum of 13 securities.

All securities in the portfolio must be listed on a national securities exchange or the NASDAQ Stock Market.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act [19] in general and furthers the objectives of Section 6(b)(5)[20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and subparagraph (f)(6) of Rule 19b–4 [22] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.[23]

Under Rule 19b–4(f)(6)(iii) of the Act,[24] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change as quickly as possible. The CBOE contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Amex, which was published for public notice and comment.[25] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,[26] and, therefore, the proposal is effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–63 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1706 Filed 1–24–03; 8:45 am]

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[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on January 2, 2003, the date CBOE filed Amendment No. 2.

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (approving SR–Amex–2002–21).

[26] For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47212; File No. SR–ISE–2002–27]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Repeal of Limitations on Orders

January 17, 2003.

On November 21, 2002, the International Securities Exchange, Inc. (''ISE'' or ''Exchange''), 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 relating to the repeal of limitations on orders. Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[3] No comments were received on the proposed rule change.

The Exchange proposes to repeal the provision in its Rule 717 that prohibits Electronic Access Members (''EAMs'') from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. The ISE adopted this ''speed bump'' in 2000 to protect ISE market makers from exposure across multiple series of options if they receive orders in many series at the same time.[4] The Exchange now represents that the rule has been outmoded by the development of sophisticated risk management tools and that eliminating this restriction will provide EAMs and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46959 (December 6, 2002), 67 FR 77115.

[4] *See* Securities Exchange Act Release No. 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001).

their customers with enhanced access to the ISE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Elimination of the ''speed bump'' will remove an impediment to trading created only to limit the market risk undertaken by ISE market makers. Additionally, the change should permit faster entry and execution of orders on the Exchange, thereby providing investors with improved services. Therefore, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2002–27) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1705 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47193; File No. SR–NQLX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Nasdaq Liffe Markets, LLC Relating to Final Settlement Prices for Cash-Settled Security Futures Products and Trading Restrictions and Suspensions

January 15, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b-7 thereunder,[2] notice is hereby given that on December 17, 2002, Nasdaq Liffe Markets, LLC (''NQLX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in items I, II, and III below, which items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has certified the proposed rule changes with the Commodity Futures Trading Commission (''CFTC'') under section 5c(c) of the Commodity Exchange Act[3] (''CEA'') on October 30, 2002, and December 16, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX proposes to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes to adopt rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors. Below is the text of the proposed rule changes. Text in italics indicates material to be added.

* * * * *

Rule 426 Trading Restrictions and Suspensions

(a) *The Chief Executive Officer or President shall have the power to restrict or suspend trading in any Exchange Contract on NQLX at any time during an Emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.*

Rule 904 Contract Specifications-Security Futures Products that Cash-Settle.

Reserved

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX is proposing to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes adopting rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.

2. Statutory Basis

NQLX files these proposed rules pursuant to section 19(b)(7) of the Act.[4] NQLX believes that its proposed rules comply with the requirements under section 6(h)(3)(H) of the Act[5] and the criteria under section 2(a)(1)(D)(i)(VII) of the CEA.[6] In addition, NQLX believes that its proposed rules are consistent with the provisions of section 6 of the Act[7] in general, and section 6(b)(5) of the Act[8] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b-7.

[3] 7 U.S.C. 7a-2(c).

[4] 15 U.S.C. 78s(b)(7).

[5] 15 U.S.C. 78f(h)(3)(H).

[6] 7 U.S.C. 2(a)(1)(D)(i)(VII).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NQLX neither solicited nor received written comment on the proposed rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[9] the proposed rule changes, as filed with the Commission, became effective on December 17, 2002.

Within 60 days of the date of effectiveness of the proposed rules, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rules and require that the proposed rules be refiled in accordance with the provisions of section 19(b)(1) of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2002–03 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1756 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47209; File No. SR–NASD–2003–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

January 17, 2003.

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 January 9, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. 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 waive for two months for each new subscriber to Nasdaq PostData the fees assessed under NASD rule 7010(s). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

Rule 7010 System Services

(a)–(r) No changes.

(s) NasdaqTrader.com Volume and Issue Data Package Fee.

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act of 1933) and data vendors. The Volume and Issue Data package includes:

(1) Daily Share Volume reports
(2) Daily Issue Data
(3) Monthly Volume Summaries
(4) Buy Volume Report
(5) Sell Volume Report
(6) Crossed Volume Report
(7) Consolidated Activity Volume Report

All fees assessed under this subsection will be waived for a period of up to two months for all new subscribers and potential new subscribers. This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData.

* * * * *

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 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. 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 January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com web site.[3] PostData was launched on March 18, 2002. Nasdaq hereby proposes to offer PostData to all new subscribers and potential subscribers without charge for up to two months for the duration of the PostData pilot.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any

[9] 15 U.S.C. 78s(b)(7)(B).

[10] 15 U.S.C. 78s(b)(1).

[11] 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. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.*, block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[4] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market maker based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Proposed Fee Waiver. In order to increase the availability of PostData within the securities industry, Nasdaq proposes to waive all fees assessed upon new subscribers to PostData for a period of up to two months. Nasdaq has repeatedly been asked by potential subscribers to offer a free trial period in order to test PostData before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable PostData to reach viability sooner.

This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData. Additionally, any vendor who provides PostData to its clients would have the opportunity to waive the fee to any new subscriber for a period of up to two months. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential direct and indirect subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[5] and 15A(b)(6)[6] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees and other charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–03 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1702 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 46316 (August 8, 2002), 67 FR 52505 (August 12, 2002)(SR–NASD–2002–90).

[5] 15 U.S.C. 78o–3(b)(5).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47210; File No. SR–NASD–2003–02]

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 Period for Nasdaq PostData and the Fees Assessed Under NASD Rule 7010(s)

January 17, 2003.

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 January 9, 2003, 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) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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] The NASD provided the Commission with notice of its intent to file the proposed rule change on December 30, 2002. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). Nasdaq asked the Commission waive the 30-day operative delay.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through February 28, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). In addition, Nasdaq proposes certain enhancements to PostData that will be available to direct and indirect users of PostData at no additional charge on a non-discriminatory basis. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

Rule 7010 System Services.

(a)–(r) No changes.

(s) NasdaqTrader.com Volume and Issue Data Package Fee.

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers[*] *(as defined in rule 144A of the Securities Act of 1933)* and data vendors. The Volume and Issue Data package includes:

(1) Daily Share Volume reports.

(2) Daily Issue Data.

(3) Monthly Volume Summaries.

(4) Buy Volume Report.

(5) Sell Volume Report.

(6) Crossed Volume Report.

(7) Consolidated Activity Volume Report.

[* For purposes of this rule, see definition of ''Qualified Institutional Buyer'' found in Section 144A of the Securities Act of 1933.]

* * * * *

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 January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Website.[6] PostData was launched on March 18, 2002. Nasdaq hereby proposes to extend the pilot period for PostData through February 28, 2003. Nasdaq also proposes to enhance PostData as described below.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provides monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.,* block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[7] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market maker based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Extension of the Pilot. Nasdaq proposes to extend the PostData pilot through February 28, 2003, subject only to the enhancements proposed below. The pilot has been effective, but adoption was slower than expected. For a variety of reasons, more time was required than originally anticipated to recruit sell-side firms to sign on to PostData to provide the critical mass of data necessary to have a product to sell to those subscribers (buy-side firms or institutional investors) interested in viewing the data. Nasdaq believes that adoption was slow because:

- Volume is attributed to the firm that has the reporting obligation based on ACT rules. This is also the methodology for the monthly share volume reports offered on Nasdaq Web sites (NasdaqTrader.com and NasdaqOnLine.com). Sell-side firms wanted to get credit for volume regardless of whether they were the reporting party or not in a trade.
- In the time since PostData was initially developed, the industry has moved to more commission-based or agency (riskless principal) trading. Firms that conduct predominantly more riskless principal trading with other sell-side firms are not well represented in PostData because in riskless principal trading only one leg of the transaction (the transaction with sell-side firm or market maker) is reported in ACT and in many cases these firms are not the reporting party.
- PostData's value and benefits were not well understood by firms, especially with firms' attention directed to other Nasdaq initiatives.

Nasdaq addressed the first two issues by enhancing PostData in August 2002 to include volume attributed to both parties of a trade (reporting and the contra-party) and identification of the volume as being buy, sell or cross. These additional data sets addressed the issue of which party gets the volume credit and display some volume for firms that primarily engage in ''riskless principal'' trading. These enhancements resulted in seven additional sell-side firms participating in PostData by the end of August.

Therefore, at this time, Nasdaq is unable to effectively study the fees assessed for PostData, as initially requested in the order approving PostData.[8] As demonstrated below, growth in the PostData subscriber base was slower than anticipated. It was not until September 2002 that the number of subscribing firms first exceeded 25. Currently, there are 33 subscribing firms paying for PostData, and of those, most are also firms that post their data. This sample is too small to draw any meaningful conclusions about the price of the product. In addition, there is no data with respect to indirect subscribers because to date there are no vendors

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

[7] *See* Securities Exchange Act Release No. 46316 (August 8, 2002), 67 FR 52504 (August 12, 2002) (SR–NASD–2002–90).

[8] *See* footnote 6, *supra.*

purchasing PostData for redistribution to their subscribers.

POSTDATA SUBSCRIBERS FROM MARCH TO DECEMBER 2002

Month	Number of sell-side firms posting their data	Number of firms subscribing to postdata
March	3	9
April	5	12
May	7	14
June	10	15
July	12	17
August	19	24
September	22	26
October	25	30
November	28	31
December	30	33

Nasdaq was able to start marketing PostData to potential subscribers such as buy-side firms and data vendors this past fall. It is from these marketing efforts that additional feedback was received such as whether more data can be provided. Nasdaq believes that these actions will increase the likelihood of attracting a meaningful number of subscribers sooner rather than later. It is difficult to predict when that will occur, but Nasdaq represents that it will update the staff regularly, and it will provide a full analysis of the fees as quickly as possible.

Proposed Enhancements. Based on feedback provided by potential subscribers, Nasdaq proposes to make the following data elements available to PostData subscribers at no additional charge:

- Daily share volume for all market participants per Nasdaq security on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.
- Daily share volume aggregates for all market participants per Nasdaq index on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.

Monthly share volume of all market participants on a per security basis has been available to Nasdaq broker-dealers for several years. Initially, the data was provided via computer diskettes sent to the head of Nasdaq trading at firms. Since October 1997, this data has been disseminated on the NasdaqTrader.com web site without charge. The monthly volume reports attribute volume to the reporting party of media-disseminated trades (trades reported to the ''tape''). Monthly data is available about 10 business days after the end of the previous month. The web site provides monthly, quarterly and year-to-date volume aggregates for up to 12 calendar months.

Subscribers and potential subscribers to PostData have requested the ability to access share volume information in customized timeframes outside of the daily and monthly information that is made available in PostData and the public part of NasdaqTrader.com. For example, a customer may track their firm's share volume activity in securities that they begin to perform research analysis for, or have raised capital in a public offering. Most often, these events do not begin at the beginning of a month. Therefore, they would like to be able to request data from customized timeframes (*e.g.*, February 15 to March 15). The daily and monthly reports in PostData do not currently meet this customer base needs.

Additionally, some market participants, primarily buy-side firms, have requested to view all market participant data on a T+1 basis and not just those sell-side firms that voluntarily choose to post their data. Other participants, primarily sell-side firms, have expressed concerns that T+1 data would reveal their trading positions. Those firms have not, however, expressed concern about revealing all market participants' volume information on a T+10 basis because the 10-day delay prevents the disclosure of meaningful information about firms' current positions. Therefore, the proposal appropriately balances the needs and concerns of each customer group and the public interest. As more time passes, the sensitivity of a specific day's volume of a market participant decreases. Ten business days is an appropriate timeframe when the daily volume information of all market participants can be made available either on a per security basis or by a Nasdaq index for example.

Nasdaq proposes to make this information available to all PostData subscribers at no additional charge on a non-discriminatory basis. In its original proposal to create PostData, Nasdaq represented that it would make product enhancements available on an equal basis to all users of the proposed products, whether customers of Nasdaq or of a participating data vendor. Specifically, if Nasdaq offers a free product enhancement during the pilot program, it will be free to all direct and indirect users,[9] and that such modifications to PostData during the pilot period would be limited to minor enhancements to the content of the package. Nasdaq believes that this rule proposal meets those requirements. In accordance with the conditions of approval of Nasdaq PostData, Nasdaq represents that the PostData modifications described in this proposed rule change will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq also represents that it has made modification information available to market data vendors generally, but that no vendors are currently accepting the PostData data or redistributing that data to subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[10] and 15A(b)(6) of the Act.[11] Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees and other charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system, and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

[9] Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. Nasdaq notes that this rule filing is properly made immediately effective because Nasdaq is not proposing to assess an additional fee for the enhancements proposed herein.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and rule 19b–4(f)(6) thereunder.[13] 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 that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to operate the PostData pilot program without interruption through February 28, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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 NASD. All submissions should refer to file number SR–NASD–2003–02 and should be submitted by February 18, 2003.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1703 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47214; File No. SR–NASD–2002–124]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendment to Rule 2260 To Expand the Definition of ''Designated Investment Adviser'' To Include State Registered Investment Advisers for the Purpose of Receiving and Voting Proxy Materials on Behalf of Beneficial Owners

January 17, 2003.

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 September 19, 2002, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. On January 8, 2003, the NASD submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Conduct rule 2260 to expand the definition of ''designated investment adviser'' to include all state registered investment advisers.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 8, 2003 (''Amendment No. 1''). In Amendment No. 1, the NASD proposes to (1) revise the first footnote of proposed NASD rule 2260 to define the term ''state'' by reference to the Investment Advisers Act of 1940, instead of the Securities Exchange Act of 1934, and (2) underline the text of two proposed footnotes in proposed NASD rule 2260 to indicate that they are proposed new text.

Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2260. Forwarding Proxy and Other Materials.

(a)–(e) No change.

(f) For purposes of this rule, the term ''designated investment adviser'' is a person registered under the Investment Advisers Act of 1940 *or registered as an investment adviser under the laws of a state*,[4] who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(1) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

(2) Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act of 1940 *or with a state as an investment adviser under the laws of such state,*[5] and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(3) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

(g) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] *The term ''state'' as used herein shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.*

[5] *Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (''IARD'') system.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule Modernization

In July 2001, NASD announced in Notice to Members 01–35 its intention to move forward with an initiative designed to ensure that NASD rules are as streamlined as possible and impose the least burden necessary to accomplish their objectives while achieving investor protection. In response to Notice to Members 01–35, some commenters asked NASD to review NASD Conduct rule 2260 to consider expanding the categories of persons to whom a member may forward proxy and other materials.

Based on the research and analysis of NASD Conduct rule 2260 conducted by NASD staff and the Economic Advisory Board (''EAB''), which was formed by NASD to assist with an economic analysis of certain NASD rules, the EAB made a formal recommendation to expand the definition of ''designated investment adviser'' in NASD Conduct rule 2260 to include all state registered investment advisers.

Proposed Expansion

Currently, NASD Conduct rule 2260 requires members to forward proxy material, annual reports, information statements and other material sent to security holders to the beneficial owner or the beneficial owner's ''designated investment adviser.'' [6] The rule defines a ''designated investment adviser'' as a person registered under the Investment Advisers Act of 1940 (''Advisers Act'') who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

NASD Conduct rule 2260 was amended in 1995 to include federally registered investment advisers.[7] However, as a result of the passage in 1996 of the National Securities Markets Improvement Act (''NSMIA''), certain state registered investment advisers need not be registered under the Advisers Act.[8] NASD Conduct rule 2260 was not updated to account for this change. As a result, under the current rule, beneficial owners cannot designate state registered investment advisers to receive proxy and other materials. The proposed rule change would expand the definition of ''designated investment adviser'' to include persons registered under the Advisers Act and persons registered by a state as an investment adviser.

NASD believes that the current exclusion of state registered investment advisers serves no valid investor protection purpose. NASD Conduct rule 2260 will continue to require that the beneficial owner execute a written designation addressed to the member that includes the name of the designated investment adviser. The beneficial owner will continue to have an unqualified right at anytime to rescind designation of the investment adviser to receive materials and to vote proxies. The recession must be in writing and submitted to the member.

The proposed rule change will continue to require that a member that receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Advisers Act or, for state registered investment advisers, is registered as an investment adviser under the laws of the state. A member may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (''IARD'') system. Under the proposed rule change, members must continue to ensure that the designated investment adviser is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock that is in the possession of the members. Members also must continue to keep records substantiating this information.

The Commission notes that the New York Stock Exchange, Inc. has filed a similar proposed rule change.[9]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to expand the definition of ''designated investment adviser'' in NASD Conduct rule 2260 is designed to accomplish these ends by updating NASD Conduct rule 2260 to be consistent with the goals of NSMIA and to address an inconsistency in the treatment of Federally-registered versus State-registered investment advisers that does not serve a valid investor protection purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 for this proposed rule change. In connection with its rule modernization initiative, NASD issued Notice to Members 02–10 (January 2002) that surveyed members on a broad range of topics that included subject matter related to this rule proposal. However, as NASD views the responses received as general survey material, it is not included in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[6] In April 2002, the SEC approved a proposed rule change to NASD Conduct rule 2260 making its provisions applicable to non-municipal debt securities. The rule change became effective on July 9, 2002. *See* Securities Exchange Act Release No. 45736 (April 11, 2002), 67 FR 19291 (April 18, 2002) (SR–NASD–2002–11).

[7] *See* Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 15, 1995) (SR–NASD–95–06).

[8] National Securities Markets Improvement Act of 1996, Pub.L. No. 104–290, 110 Stat. 3416 (1996). The Commission notes that title III of NSMIA (a/k/a The Investment Advisers Supervision Coordination Act) provides for Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management. The Commission also notes that new section 203A(a) of the Advisers Act provides that an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser:

(i) Has assets under management of not less than $25 million (or such higher amount as the Commission may, by rule, deem appropriate), or

(ii) Is an advisor to an investment company registered under the Investment Company Act of 1940. 15 U.S.C. 80b–3a.

[9] *See* Exchange Act Release No. 47215 (January 21, 2003).

[10] 15 U.S.C. 78o–3(b)(6).

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2002–124 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1755 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47197; File No. SR–NSCC–2002–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adding Services Data Services Only Members are Permitted To Access

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 6, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 proposed rule change adds additional services that Data Services Only members of NSCC are permitted to access.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change adds additional NSCC services that Data Services Only members will be permitted to access.[3] Data Services Only members will be permitted to access all features of NSCC's Insurance Processing Services, provided that Data Services Only members will not be able to settle transactions through NSCC's facilities. NSCC's current fee schedule will be applied to Data Services Only members' use of such services.

The proposed rule change will increase automation of data transmission and reception and permit greater access to such information thus facilitating the prompt and accurate clearance and settlement of securities transactions. NSCC therefore believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] promulgated thereunder. At any time within sixty 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.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2002–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] For additional information about the category of Data Services Only members, see Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR–NSCC–2001–14] and 45560 (March 14, 2002), 67 FR 13200 [File No. SR–NSCC–2001–18].

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–13 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1709 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47195; File No. SR–NSCC–2002–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Making a Technical Correction to NSCC's Rules

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by NSCC. 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 proposed rule change makes a technical correction to NSCC's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical correction to SR–NSCC–2002–06, which the Commission approved on November 25, 2002.[3]

On July 25, 2002, NSCC filed and on August 19, 2002, amended, SR–NSCC–2002–06. This filing clarified NSCC's rules and procedures with regard to the imposition of fines on participants and more specifically identified the actions or inactions of participants that would result in fines being imposed upon them.

Among other things, SR–NSCC–2002–06 modified NSCC rule 48, ''Disciplinary Proceedings,'' sections 1 and 2 by inserting the term ''Settling Bank Only Member'' at the beginning of each of those sections but did not repeat the term throughout the sections as it should have. In addition, in modifying rule 48 to include the term ''Settling Bank Only Member,'' rule 45, ''Notices,'' section 6 should have been similarly changed. This filing appropriately modifies rules 48 and 45.

As a technical change to NSCC's rules, the proposed rule change is concerned solely with the administration of NSCC; NSCC therefore believes that it is consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[4] and rule 19b-4(f)(1)[5] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. 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.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2002–14. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–14 and should be submitted by February 18, 2003.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 46903 (November 25, 2002), 67 FR 72012.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1712 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47199; File No. SR–OCC–2002–25]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Definition of Market-Maker in OCC's By-Laws

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 17, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the definition of the term market-maker as used in OCC's by-laws and rules. Specifically, OCC proposes to exclude from such definition any person who is required to be treated as a customer under Commission Rule 15c3–3.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of the proposed rule change is to exclude from the definition of market-maker in Article I of OCC's By-Laws any person that is required to be treated as a customer for purposes of Rule 15c3–3 so that OCC may have a lien on all securities in a market-maker's account without causing clearing members to be in violation of Rule 15c3–3. The proposed rule change also: (1) Clarifies that OCC's lien on assets in a customers' account may be enforced to satisfy only those clearing member obligations arising from the account and (2) eliminates outdated references in OCC's rules to specialists and specialists' accounts.

Under Rule 15c3–3, fully paid or excess margin securities of customers must be maintained by broker dealers, including OCC clearing members, in a control location.[4] The Commission staff has informally stated that securities that are held subject to a lien to secure obligations of the carrying broker are not deemed to be in a control location for purposes of Rule 15c3–3.[5] Broker dealers, however, are excluded from the definition of customer in Rule 15c3–3(a)(1).[6]

Under Article VI, ''Clearance of Exchange Transactions,'' Section 3, ''Maintenance of Accounts,'' of OCC's By-Laws, an OCC clearing member grants OCC a lien on all positions in a market-maker's account to secure the obligations of the clearing member with respect to that account (or to secure all obligations of the clearing member, if the market-maker is a proprietary market-maker). Therefore, a clearing member could not permit positions of a Rule 15c3–3 customer to be carried in a market-maker account without risk of violating Rule 15c3–3. In order to avoid inadvertent violations of Rule 15c3–3, OCC is amending the definition of market-maker in its by-laws to exclude any person treated as a customer for purposes of Rule 15c3–3.

This change is advisable because the definition of market-maker as amended in SR–OCC–2001–07[7] includes persons performing market-maker functions on futures exchanges or security futures markets that are primarily regulated as futures exchanges and only notice-registered as national securities exchanges. Such persons may not be brokers or dealers as defined in Section 3(a)(4) and (5) of the Act and therefore may not automatically be excluded from the Rule 15c3–3 definition of customer. The proposed rule change will allow positions of futures floor traders and other market-makers that are customers under Rule 15c3–3 to be included in a securities customers' account under Article VI, Section 3(e) or if the positions are carried in a futures customer account of the books of the clearing member, in a segregated futures account under Article VI, Section 3(f). Under the futures regulatory scheme, positions of floor traders and other professionals that are not affiliated with the carrying futures commission merchant are ordinarily required to be carried in the segregated funds account.[8]

Article VI, Section 3 of OCC's By-Laws describes the various types of accounts that clearing members may carry at OCC. Each paragraph in Section 3 describes the extent of any lien that OCC may have on the assets in that particular account and with respect to all accounts except the customers' account, describes the scope of the obligations collateralized by those assets. Assets in proprietary accounts generally secure any obligation of the clearing member to OCC whereas assets in certain other account types secure only obligations arising from the particular account in which the assets are held. For example, Article VI, Section 3(f), states that OCC's lien on assets in a segregated futures account acts as security for all obligations of the clearing member with respect to such account.

The proposed rule change brings Section 3(e) in conformity with the other paragraphs in Section 3 by clarifying that OCC's lien on a securities customers' account secures only the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.15c3–3.

[3] The Commission has modified parts of these statements.

[4] Rule 15c3–3(a) defines fully paid excess margin securities. Rule 15c3–3(c) identifies various means by which broker dealers may hold securities that meet the control requirement.

[5] *See, e.g.*, Michael P. Jamroz, *The Customer Protection Rule,* 57 The Business Lawyer 1069, 1085 (May 2002).

[6] Rule 15c3–3(a)(1) defines customer as any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker, or government securities dealer. The term shall, however, include another broker or dealer to the extent that broker or dealer maintains an omnibus account for the account of customers of the broker or dealer in compliance with Regulation T (12 CFR 220.1 through 220.19).

[7] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (order approving rules for clearance of security futures).

[8] *See* CFTC Reg. 1.3(k) (defining customer as a person other than an owner or holder of a proprietary account); CFTC Reg. 1.3(y) (defining proprietary account in a manner that excludes an account owned or held by an unaffiliated entity); CFTC Reg. 1.20 (requiring that customer funds be separately accounted for and segregated).

obligations of the clearing member to OCC with respect to that account. This does not represent a substantive change because the same effect is achieved under OCC's Rule 1104(a), which requires that any proceeds from assets in the customers' account be returned to the clearing member or its representative to the extent that such proceeds exceed obligations arising from the customers' account.

In SR–OCC–2001–07, OCC simplified its description of market-maker accounts by subsuming ''specialist'' and ''specialist's account'' within the definition of market-maker and market-maker's account, respectively, in Article I. OCC at that time also adopted conforming changes to eliminate the terms specialist and specialist's account where they appeared in Article VI, Section 3. The proposed amendments to Chapters IV, VI, and XII and to the definition of JBO Participant in Article I are further conforming changes that eliminate obsolete references to specialist and specialist's account where they appear elsewhere in OCC's rules.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended, and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–4(f)(1) [10] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty 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.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2002–25. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–25 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1707 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47198; File No. SR–OCC–2002–24]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clarifying Regulatory Registration Requirements for OCC Membership

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 8, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies and restates OCC's by-laws relating to regulatory registration requirements for OCC membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to restate and clarify applicable regulatory registration requirements in OCC's by-laws. To ensure that OCC clearing members are subject to appropriate regulatory authority standards and financial reporting requirements, OCC requires that each clearing member be either fully registered as a broker dealer under

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

section 15(b)(1) or (2) of the Act or fully registered as a futures commission merchant (''FCM'') under section 4f(a)(1) of the Commodity Exchange Act (''CEA'').[3] A limited exception exists for a ''non-U.S. securities firm'' as defined in Article I of OCC's by-laws, which requires appropriate supervision by a non-U.S. regulatory body.[4] OCC also requires clearing members to satisfy any additional registration requirements that may be applicable to the clearing member under the Act or the CEA as a result of the particular clearing activity conducted by the clearing member.

As currently drafted, Article V, Section 1, Interpretation and Policy .08 (''Interpretation''), which was adopted as part of OCC's rule filing permitting it to clear commodity futures,[5] states that in order to clear options other than futures options a clearing member must be a fully registered broker dealer. Thus, the Interpretation would appear to require a non-U.S. securities firm that would not otherwise be required to register as a broker dealer to so register in order to clear securities options. This was not intended and is inconsistent with Article V, Section 1, which provides that a non-U.S. securities firm may become a clearing member. The very purpose of permitting non-U.S. securities firms, which by definition are not registered as broker dealers, to become clearing members was to allow them to clear securities options. Applying the Interpretation as written would frustrate that purpose.

As currently drafted, the Interpretation also states that in order to clear commodity futures and futures options, a clearing member must be a fully registered FCM, and in order to clear security futures products, a fully registered broker dealer must also be a fully registered FCM or notice-registered as an FCM under section 4f(a)(2) of the CEA. However, the CEA and the CFTC's regulations do not require a person engaged only in proprietary trading and clearing to register as an FCM, whether clearing conventional securities products or security futures products.[6] OCC did not intend to require FCM registration where such registration is not mandated by the CEA or the CFTC's regulations. The restated Interpretation would eliminate any contrary implication.

Finally, as currently drafted, the Interpretation fails to account for the possibility that a non-U.S. securities firm might lawfully clear securities futures products for its own account without registration under either the Act or the CEA. The restated Interpretation makes clear that a firm qualifying as a non-U.S. securities firm under OCC's rules can clear any product through OCC without registration under U.S. laws so long as it would not be in violation of those laws in regulations in so doing.

OCC believes the proposed rule change is consistent with Section 17A of the Act because by specifically identifying the regulatory restrictions required for clearing members engaged in clearing particular products, it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty 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.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2002–24. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–24 and should be submitted by February 18, 2003.

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[3] 7 U.S.C. 1 *et seq.*

[4] Article I, Definitions, of OCC's by-laws defines ''non-U.S. securities firms'' as a securities firm (1) formed and operating under the laws of a country other than the U.S., (2) with its principal place of business in that country, (3) that is subject to regulation in that country, and (4) that is not registered or required to be registered as a broker dealer. The proposed rule change adds the requirement that the firm not be registered or required to be registered as an FCM.

[5] Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (May 22, 2002) [OCC–2001–16].

[6] Section 4d of the CEA makes it unlawful for any person to act as an FCM in soliciting or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person is registered with the CFTC as an FCM. In order to fall within the definition of an FCM in section 1a(20) of the CEA, a person must, in connection with the soliciting or accepting of orders for the purchase or sale of a futures contract on a contract market or derivatives transaction execution facility, accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result. A firm trading exclusively for its own account would not meet that definition. Moreover, CTFC Regulation 3.10(c) provides that a person trading solely for proprietary accounts, as defined in Regulation 1.3(y), is not required to register as an FCM. 17 CFR 3.10(c).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1708 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47196; File No. SR–OCC–2002–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Alternative Schedule of Fees for Clearing Transactions in Security Futures

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 28, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would provide for an alternative schedule of fees for clearing transactions in security futures. Markets for which OCC provides clearance and settlement services for security futures are permitted to elect either OCC's standard or alternative schedule of fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend OCC's schedule of fees to provide for an alternative, discounted fee schedule for clearing transactions in security futures. This proposed alternative fee schedule is based on the fees for clearing services contained in the Security Futures Agreement for Clearing and Settlement Services between OCC and OneChicago, LLC.[3] The alternative fee schedule is as follows:

(1) Trades with contracts of: (i) 1 to 500 contracts: $0.07; (ii) 501 to 1,000 contracts: $0.06; (iii) 1,001 to 2,000 contracts: $0.05; and (iv) $85.00 for transactions larger than 2,000 contracts.

(2) Associate clearinghouse cleared trades with contracts of: (i) 1 to 500 contracts: $0.05; (ii) 501 to 1,000 contracts: $0.0425; and (iii) 1,001 to 2,000 contracts: $0.035; and (iv) $61.00 for transactions larger than 2,000 contracts.

(3) Trades in new security futures product fee schedule:[4] (i) First calendar month traded: $0.00; (ii) second calendar month traded: $0.025, regardless of size; (iii) third calendar month traded: the lesser of the total at $0.05/contract or $85.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(4) Associate clearinghouse cleared trades in new security futures product fee schedule: (i) First calendar month traded: $0.00; (ii) second calendar month traded: $0.02, regardless of size; (iii) third calendar month traded: the lesser of the total at $0.035/contract or $61.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(5) Minimum monthly fee: $200.

Markets trading security futures products can elect OCC's standard or alternative fee schedule. Fees are charged on a per-side basis. The minimum monthly clearing fee is $200. Because clearing fees are discounted under the alternative schedule, fees collected under it are excluded from any other rebates or discounts offered by OCC and from any year-end refund of clearing fees.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to OCC because it establishes a reasonable alternative fee schedule to be charged for clearing transactions in security futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(f)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–20. This file number should be included on the subject line if e-mail is used. To help us process and

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR–OCC–2002–07].

[4] For purposes of this alternative security futures fee schedule, ''new security futures product'' does not include security futures products overlying additional underlying interests of the same general description as interests on which security futures products are then traded (*e.g.*, additional stocks or additional narrow-based indexes) unless there are material differences, other than as to variable terms such as expiration months, in the terms of the security futures product itself.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–20 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1710 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47194; File No. SR–OCC–2002–26]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to the Treatment of Multiple Accounts of the Same Type

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 17, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's by-laws and rules to make explicit OCC's existing interpretations as to the treatment of multiple accounts of the same type whether maintained under one or more clearing numbers in the event of the liquidation of the clearing member's accounts by OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change sets forth certain interpretations as to the treatment of multiple accounts of the same type whether maintained under one or more clearing member numbers in OCC's system in the event of a liquidation of the clearing member's accounts by OCC pursuant to chapter XI of OCC's rules, ''Suspension of a Clearing Member.'' These interpretations merely make more explicit OCC's existing interpretations and practices and do not represent any substantive change. OCC is formalizing them because it has become increasingly common for clearing members to maintain accounts under more than one clearing member number in OCC's clearing system.

OCC ordinarily assigns each clearing member a number which serves to identify the clearing member in OCC's system. Some clearing members have more than one clearing member number as a result of having acquired other clearing members or having requested separate numbers to identify particular divisions or sets of accounts for internal purposes. In other cases, OCC may assign additional clearing member numbers to a clearing member in order to permit the clearing member to maintain additional accounts that cannot be accommodated under the same number within OCC's system. For example, clearing members may be assigned an additional clearing member number in order to establish a JBO Account in addition to an existing combined market-maker account because OCC's current clearing system cannot accommodate both accounts under a single number.

The need for multiple clearing member numbers will be reduced when ENCORE, OCC's new clearing system currently under development, becomes fully operational. Even then, however, there may be reasons for a single clearing member to maintain more than one clearing member number.

OCC believes that this rule change is advisable in order to clarify that OCC's suspension and liquidation rules look only to the clearing member as a legal entity and disregard any separation of the clearing member's business into divisions or separate sets of accounts. (Of course, absent a contrary agreement or a situation where piercing the corporate veil is appropriate under applicable principles of corporate law, affiliated clearing members that are separate legal entities would retain their separate identity in a liquidation.)

OCC is also modifying the wording of the lead-in language of article VI, section 3 of its by-laws, ''Maintenance of Accounts,'' by changing the word ''shall'' to ''may.'' This change is appropriate to make clear that clearing members are not required to maintain every different type of account that is permitted under section 3. This change in wording also represents a clarification rather than a substantive change. Indeed, many clearing members at present maintain fewer than all of the permitted types of accounts because some account types are not needed for their particular business activities.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by clarifying the application of OCC's liquidation rules to clearing members that maintain multiple clearing member numbers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [3] and rule 19b–4(f)(1)[4] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. 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.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-OCC–2002–26. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC–2002–26 and should be submitted by February 18, 2003.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1711 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47211; File No. SR–PCX–2002–55]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Regarding Market Maker Quoting Obligations

January 17, 2003.

On August 7, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 require options market makers to vocalize a legal-width, two-sided market for a minimum of ten contracts whenever a floor broker enters a trading crowd and calls for a market in an option series that is one of the 120 most actively traded equity options (''Top 120 options''). This obligation would apply to: (i) Market makers who have executed a transaction in a Top 120 option, but not those who have been assigned contracts by the Order Book Official on either the day of the floor broker's call for a market or on the previous business day; (ii) non-broker-dealer orders; and (iii) series not designated as LEAPS.[3]

On November 8, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on December 13, 2002.[5] The Commission received no comment letters on the proposal. This order approves the proposal, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of Section 6(b)(5) of the Act.[7]

The Commission believes that the proposal should provide greater depth and liquidity to the marketplace by increasing from one contract to ten contracts most PCX market makers' minimum quoting obligation when a floor broker enters the crowd with a non-broker-dealer order and calls for a market in the Top 120 options. The Commission notes that the increased quote size obligations for the Top 120 options applies to market makers that have executed a trade on the same or previous day that a floor broker requests a market in a particular Top 120 option. The Commission believes it is appropriate that the proposal does not apply to market makers that have executed a trade only as a result of the assignment of contracts by the Order Book Official in an attempt to satisfy an order represented by the floor broker,[8] because market makers should not have their quoting obligations increased when fulfilling their obligation to assist an Order Book Official attempting to satisfy an order represented by a floor broker.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–PCX–2002–55) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1704 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.4.

[4] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 7, 2002.

[5] *See* Securities Exchange Act Release No. 46947 (December 4, 2002), 67 FR 76771.

[6] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* PCX Rule 6.37, Commentary .05.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47207; File No. SR–PCX–2002–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in Listed Securities and To Increase the Transaction Fee for Certain Transactions in Listed Securities

January 16, 2003.

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 December 31, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its fee schedule to increase the transaction credit for ETP Holders[3] and Sponsored Participants[4] who provide liquidity in listed securities that are traded on the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The PCX also proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book.[5] The text of the proposed rule change is available at the PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the PCX's fee schedule by increasing the level of the transaction credit paid to ETP Holders and Sponsored Participants (collectively ''Users'') who provide liquidity in exchange-listed securities that are traded on ArcaEx. Currently, Users earn a credit of $0.001 per share for providing liquidity in listed securities by entering resting limit orders that are subsequently executed against incoming marketable orders in the ArcaEx book. The PCX proposes to increase the level of the transaction credit for listed securities from $0.001 to $0.002 per share. The increased credit of $0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds (''ETFs'') and American Depository Receipts (''ADRs''). The PCX intends for this credit to create additional incentives to Users to provide liquidity in listed securities that are traded on the ArcaEx facility.

In addition, the PCX proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book. Currently, Users who take liquidity from the ArcaEx Book are charged $0.002 per share. The PCX proposes to increase the level of the transaction fee for listed securities from $0.002 to $0.003 per share, which would bring the fee to the same level as currently applied to orders in ETFs.[6]

2. Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act,[7] particularly section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX had designated the foregoing rule change proposal as a fee filing, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and rule 19b–4(f) thereunder.[10] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE rule 1.1(n).

[4] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] rule 7.29.'' *See* PCXE rule 1.1(tt).

[5] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes: the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE rules 7.36 and 7.37 for a detailed description of these order execution processes.

[6] The PCX notes that the following items continue to be excluded from this fee: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–79 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1713 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4250]

Notice Convening the Accountability Review Board for the Murder of Mr. Laurence Foley, USAID Official in Amman, Jordan

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the October 28, 2002, murder of Mr. Laurence (Larry) Foley of the U.S. Agency for International Development (AID) in Amman, Jordan, involved loss of life at or related to a U.S. mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and the circumstances of the attack and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Ambassador Wesley Egan as Chair of the Board. He will be assisted by Frederick Mecke, Timothy Deerr, George Wachtenheim, Charles S. Phalen, Jr., and by Executive Secretary Howard Perlow. All will bring to their deliberations distinguished backgrounds in government service and in the private sector.

I have asked the Board to submit its conclusions and recommendations to me within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 647–5204 or send a fax to the Board at (202) 647–3282.

[11] 17 CFR 200.30–3(a)(12).

Dated: January 6, 2003.

Colin L. Powell,

Secretary of State, Department of State.

Accountability Review Board—Amman, Jordan; Mandate

A. Review and Report. The Accountability Review Board shall examine the facts and circumstances surrounding the October 28, 2002, murder of Mr. Laurence Foley, an employee of the U.S. Agency for International Development who was assigned to the American Embassy in Amman, Jordan. Mr. Foley was shot in the driveway of his home at approximately 7:15 a.m. while preparing to leave for work. The ARB shall submit a detailed written report to the Secretary of State within 60 days of its first meeting. If the Chair determines that more than 60 days are necessary to complete the Board's review, the Chair shall notify the Secretary of State of that fact and the amount of additional time needed.

B. Findings. In accordance with section 304 (a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (''the Act''), the Board shall make written findings in its report to include at least the following matters:

1. The extent to which the incident (with respect to which the Board was convened) was security-related;

2. Whether in this case the security systems and security procedures were adequate;

3. Whether the security systems and security procedures were properly implemented in this case;

4. The impact of intelligence and information availability in this case;

5. Whether there is reasonable cause to believe that any individual has breached the duty of that individual; and

6. Such other factors and circumstances which may be relevant to the appropriate security management of United States missions abroad.

C. Program Findings and Recommendations. The Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations, as appropriate, to improve the security and efficiency of any program or operations which the Board has reviewed.

D. Personnel Findings and Recommendations. If the Board finds reasonable cause to believe that an employee of the United States Government, or member of the uniformed services, as defined by section 303(a)(1)(B) of the Act, has breached his or her duty, the Board shall:

(1) Notify the individual concerned;

(2) Transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality; and

(3) Recommend that such agency or instrumentality initiate appropriate investigatory or disciplinary actions.

E. Coordination with Law Enforcement Investigations. I expect that the Board will carry out its activities in a manner that does not interfere with or compromise the work of the Justice Department or any other law enforcement authority conducting an investigation of the incident. Specifically, the Board shall coordinate its activities in accordance with the State-Justice Memorandum of Understanding (MOU) signed in September of 2001.

F. Termination. The Board shall terminate 30 days after submission of its report to the Secretary of State unless the Secretary of State within that time requests that further proceedings be held by the Board and specifies a new termination date.

[FR Doc. 03–1645 Filed 1–24–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4252]

Culturally Significant Objects Imported for Exhibition Determinations: ''Renoir and Algeria''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Renoir and Algeria,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on

or about February 16, 2003, to on or about May 11, 2003, the Dallas Museum of Art, Dallas, Texas, from on or about June 8, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 15, 2003.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–1767 Filed 1–24–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Pickwick Reservoir Land Management Plan, Lauderdale and Colbert Counties, AL; Tishomingo County, MS; and Hardin County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has updated its 1981 land management plan for 19,238 acres of TVA public land on Pickwick Reservoir in Alabama, Mississippi, and Tennessee. TVA will use the plan to guide land use approvals, private water-use facility permitting, and resource management decisions on Pickwick Reservoir. On September 10, 2002, the TVA Board of Directors decided to adopt the preferred alternative (Alternative B) identified in the Final Environmental Impact Statement (EIS) and Land Management Plan, Pickwick Reservoir. A notice of availability of the final EIS was published in the **Federal Register** on August 2, 2002. Under the adopted land plan, TVA has allocated undeveloped lands for public recreation and natural resource conservation, and has also been responsive to local requests for use of TVA lands for water access and community development. Of the 19,238 acres of TVA lands on the reservoir which are available for allocation, 16,291 acres would be allocated to natural resource conservation (Zone 4), sensitive resource management (Zone 3), TVA project operations (Zone 2); 1,327 acres would be allocated for developed recreation (Zone 6) uses such as marinas, campgrounds, parks, and boat ramps; 1,085 acres would be allocated for residential lake access, and 534 acres for industrial or commercial uses (Zone 5). Although reserved for conservation purposes, lands in Zones 3 and 4 also lend themselves to dispersed recreation uses.

FOR FURTHER INFORMATION CONTACT: Harold Draper, Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902—1499; telephone (865) 632–6996 or e-mail *hmdraper@tva,gov.*

SUPPLEMENTARY INFORMATION: Pickwick Reservoir is a 52.7-mile long reservoir completed in 1938. Although 63,625 acres were acquired for construction of the reservoir, 42,708 are covered by water. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current balance of 19,238 acres of TVA public land above normal summer pool elevation of 414 mean sea level.

TVA first announced its proposal to update its 1981 land management plan in 2001. TVA determined that the development of an EIS would allow a better understanding of the impacts of the alternatives. TVA published in the **Federal Register** a notice of intent to prepare an EIS on March 26, 2001. Meetings were held to inform the public of TVA's proposal to update the land allocation plan and to solicit input on scoping this proposal. The scoping meetings were held on March 29, 2001, in Lula, Mississippi at the Tishomingo County High School; April 3, 2001, in Memphis, Tennessee at the Adam's Mark Hotel; April 6, 2001, in Pickwick Dam, Tennessee at the Pickwick Landing State Park; and April 12, 2001, in Muscle Shoals, Alabama at the TVA Environmental Research Center Auditorium. These meetings were attended by 203 people. In addition, written comments were invited through a news release, newspaper notices, and a web site notice. During the scoping period, commenters expressed a desire for more environmental protection of the lands of Pickwick Reservoir, and discussed how they valued the scenic beauty and setting of the reservoir. TVA made an effort to identify parcels of land with sensitive resources that should be managed in a manner that ensures the protection of these resources. Further, TVA used the comments received during the scoping process to develop alternatives to be assessed in the draft EIS (DEIS). TVA assessed the impacts of the following alternatives: No action (Alternative A); balanced conservation with limited development (Alternative B); and conservation (Alternative C). A notice of availability (NOA) of the DEIS appeared in the **Federal Register** on May 3, 2002.

In addition to written materials, additional information on the proposals and other aspects of the DEIS was available to the public in four public meetings held in May 7, 2002, in Muscle Shoals, Alabama at the TVA Environmental Research Center Auditorium; May 14, 2002, in luka, Mississippi at the Tishomingo County High School; May 16, 2002, in Memphis, Tennessee at the Adam's Mark Hotel; and May 21, 2002, in Pickwick Dam, Tennessee at the Pickwick Landing State Park. Approximately 64 comments were received on the DEIS. These comments primarily related to recommendations for proposed uses of TVA land. In the Final EIS (FEIS), TVA selected Alternative B as the preferred alternative. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A NOA for the Final EIS was published in the **Federal Register** on August 2, 2001.

Alternatives Considered

TVA considered three alternatives, including no action, for allocation of Pickwick Reservoir lands. The action alternatives were characterized as Alternative B, balanced conservation with limited developed recreation and industrial/commercial development, and Alternative C, conservation. Alternative B accommodated use requests and allocation changes for 3 parcels, while Alternative C did not accommodate allocation change requests and instead reserved these three parcels to conservation-oriented uses by allocating the parcels to Zone 4. In response to public comments on the DEIS, TVA selected Alternative B as the preferred alternative for the FEIS.

Under *Alternative A, the no action alternative,* TVA would not revise the 1981 allocation plan. Proposed land use requests received from external applicants or internal TVA interests would be evaluated for consistency with the 1981 plan. Requested land uses that are consistent would be approved or denied based on a review of potential environmental impacts and other administrative considerations. If the

request is not consistent with the designated land use, and TVA staff believe the proposal has merit, then the TVA Board of Directors would be asked to amend the plan and change the allocation.

The 1981 plan used 10 allocation categories to allocate approximately 21,000 acres of TVA public land. Residential shoreline and other shoreline strips were not included in the allocations. Many parcels in the 1981 plan were designated with multiple allocation tags, allowing their consideration for a wide range of uses with a wide range of resulting environmental consequences. TVA estimates that under the existing plan, 31.5 to 55.0 percent of reservoir lands would be used for sensitive resource protection or natural resource management, 2.3 to 13.0 percent would be used for industrial or other developed uses, and 1.9 to 12.8 percent would be used for recreation development. As explained in the FEIS, the above figures are presented as ranges because certain parcels have multiple allocation tags under the 1981 plan.

Under *Alternative B, balanced conservation with limited developed recreation and industrial/commercial development,* 69.8 percent of project lands would be allocated to sensitive resource protection or natural resource management uses, 2.8 percent would be allocated for developed uses or industrial uses, 6.9 percent for recreation development, and 5.6 percent for residential access.

Under *Alternative C, conservation,* 70.5 percent of project lands would be allocated to environmental protection and natural resource management uses, 2.4 percent for developed uses or industrial uses, 6.7 percent for recreation development, and 5.5 percent for residential access.

Alternatives B and C differ with respect to the allocations for Parcels 37, 53, and 156. Under Alternative B, TVA would allocated these tracts for developed uses: Parcel 37 (35 acres) for recreation development; Parcel 156 (89 acres) for industrial development; and Parcel 156 (21 acres) for residential development. Under Alternative C, TVA would allocate all three tracts for natural resource conservation (Zone 4).

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B would balance the competing demands of development and conservation. Proposed development activities would have insignificant environmental impacts.

Because the potential effects on historic properties cannot be fully determined prior to implementation of the land plan, TVA will use a phased identification and evaluation process as allowed under 36 CFR 800.4(b)(2) to fulfill its obligations under section 106 of the National Historic Preservation Act in all three states. A programmatic agreement for reservoir land management plans in Alabama has been executed. ACHP, TVA, the Alabama SHPO, the Eastern Band of Cherokee Indians, and the Chickasaw Nation are signatories in the Programmatic Agreement, and the Alabama Indian Affairs Commission is a concurring party.

Response to Comments

Appendix H of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 64 individuals and organizations on the DEIS. The open public process and discussion on a number of issues substantially enhanced TVA's decision making. TVA also received comments on the FEIS from EPA, Alabama Historical Commission, and Tennessee Historical Commission.

As in response to the FEIS, EPA continues to prefer Alternative C or a modification thereof over TVA Preferred Alternative B. EPA recommends if Alternative B was to be selected by TVA, that there be a careful balance between development and the environment, such that development in Zones 5 and 6 is consistent with state and federal environmental regulations and that the current quality of the environment is maintained in conservation zones 3 and 4. EPA also looks to TVA to be selective in the type of development allowed in order to minimize/mitigate potential environmental impacts on Pickwick Reservoir. Further, EPA encourages TVA to be selective in the type of development allowed in order to minimize/mitigate potential environmental impacts on Pickwick Reservoir. Further, EPA encourages TVA to not only directly manage its reservoir shorelands through its updated land management plans and its Shoreline Management Initiative (SMI) Policy, but also to increase its stakeholder activities within the entire watershed community for the overall management of Pickwick and other reservoirs. It is also recommended by EPA that in future, TVA reservoir management EISs and Records of Decision (RODs), protection activities in the greater watershed be disclosed, including progress toward a stakeholder watershed protection plan for the reservoir being considered.

In cognizance of EPA's comments, TVA will continue to emphasize water quality considerations in its land use and section 26a decision making processes for facilities on Pickwick Reservoir. As to the need to mitigate potential environmental impacts, Alternative B is designed such that seventy percent of the TVA public land is allocated to Zones 3 and 4, whereas only 7.9 percent is allocated to Zones 5 and 6. Further, under Alternative B, the amount of TVA public land allocated to Zones 5 and 6 has been reduced by 3,095 acres as compared to Alternative A, the no action alternative. All land use and 26a applicants are required to obtain the necessary federal and state permits to operate their facilities. Under Alternative B, TVA has attempted to accommodate only three development proposals consisting of 145 acres out of 19,238 acres. These proposals are of limited area and shoreline length. As to Parcel 53, the proposed industrial development will occur on backlying lands, and the request to TVA will be limited to corridors for water access. The site-specific impacts of the proposed industrial development tract would be appropriately mitigated through measures identified in the NEPA reviews associated with tract specific requests.

EPA's comment encouraging TVA to increase its stakeholder activities within the entire watershed community for the overall management of Pickwick and other reservoirs is well taken. Water quality is a major consideration in the management of TVA reservoirs. In addition to its efforts to control pollutants via its shoreline and land use, TVA currently has more than 50 watershed water quality initiatives underway across the Valley. Many of these are directly focused on impacts of nutrients on reservoir water quality. These initiatives are undertaken in large part as a response to monitored conditions such as chlorophyll levels. Efforts are targeted on reservoirs and watersheds where the needs are most critical and where there is a reasonable likelihood of success. Furthermore, efforts are focused on identifying and controlling significant sources of pollutants within the watershed where increased control is likely to produce measurable improvements. Additionally, TVA plays a major role as stakeholder in overall watershed management through its participation in numerous local and regional

organizations focusing on watershed and water quality issues. Our active involvement in stakeholder driven initiatives is a hallmark of TVA's resource stewardship program. TVA has provided data and technical assistance to States for their use in development of reservoir water quality standards. Specifically, we have provided data to ADEM for its consideration of chlorophyll standards for Pickwick Reservoir. While water quality standards development are a State and EPA function, TVA provides the technical support necessary for development of standards to protect water quality. TVA continues to monitor water quality in its reservoirs and steams and systematically uses these data to target its management efforts. The importance and value of water quality monitoring is clearly understood by TVA.

In other agency comments, the Tennessee Historical Commission (THC) concurred that phased compliance is an appropriate strategy, and requested that TVA submit all historic property survey reports to the office for review and comment. In accordance with standard section 106 of the National Historic Preservation Act, TVA will provide this information to the THC for all properties in Tennessee subject to land disturbance activity. The Alabama Historical Commission agreed with Alternative B provided that a phase II archaeological investigation be conducted for every site potentially eligible for National Register of Historic Places that could be affected by land disturbance activities proposed in the future. TVA will conduct archaeological and historic structure surveys to identify historic properties, and will submit phase II proposals to the Alabama Historical Commission for approval prior to testing for projects in Alabama.

Decision

The TVA Board decided on September 10, 2002, to adopt the Pickwick Reservoir Land Management Plan as described in Alternative B. TVA believes that Alternative B not only responds to community development and recreational development needs on Pickwick Reservoir, but also recognizes and preserves the aesthetic and sensitive resources which make the reservoir unique. Alternative B sets aside parcels containing sensitive resources and habitats in the sensitive resource protection and natural resource conservation categories. For lands where TVA proposes to consider development proposals, Alternative B adopt commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

Out of the 19,238 planned acres considered under Alternatives B and C, less than one percent (145 acres) are considered for development purposes under Alternative B. Potential adverse impacts can be substantially avoided or minimized through mitigation measures. TVA has therefore concluded that between the two action alternatives (Alternatives B and C), there is no clear environmentally preferable alternative for the Pickwick Reservoir Land Management Plan. Both B and C are environmentally preferable as compared to the no action alternative (Alternative A). TVA believes that Alternative B helps to meet the multiple objectives of the Pickwick project, and would result in substantially better environmental protection than previous shoreline development practices.

Environmental Commitments

The land plan envisioned in Alternative B advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches. Environmental protection measures are built into the formulation of Alternative B since the approximately 70 percent of the land is allocated to conservation uses (Zones 3 and 4). Further, the retention by TVA of fee ownership of Zones 5 and 7 lands would ensure appropriate buffers between the developed land and the water. In addition, TVA is adopting the following measures to minimize environmental impacts:

- All soil-disturbing activities, such as dredging, shoreline excavations, *etc.*, on Parcels 26, 36, 41, 61, 66, 67, and 68 would be conducted in a manner to avoid impacts to cultural resources.
- The construction of water use facilities and shorelines alterations within the marked limits of the safety landings and harbors would be prohibited.
- Requests for water use facilities on shoreline immediately upstream and downstream of the safety landings and harbors would continue to be reviewed to ensure that barge tows would have sufficient room to maneuver in and out of the safety landings and harbors without the risk of damaging private property.
- Because caves are extremely fragile and biologically significant, TVA has placed and would continue to maintain protective buffer zones around each of the known caves on TVA public land on Pickwick Reservoir.
- Wetlands on Parcel 37 would be mitigated by avoiding wetlands areas, including small upland buffers.
- Corridors for water access across Parcel 53 would be designed to avoid impacts to terrestrial habitat and wetlands.
- Requests for the alteration or further development of this parcel would need to include BMPs and maintenance of a 50-foot SMZ to reduce potential impacts.
- Requests for the alteration or development of Parcel 156 would need to include mitigation measures, such as vegetation management plans, use of architecturally compatible styles/colors, and height restrictions to maintain the scenic attractiveness without adversely impacting the scene integrity.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be significantly reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm associated with the alternative adopted by the TVA Board.

As TVA implements the Pickwick Reservoir Land Management Plan, the agency will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: January 10, 2003.

Kathryn J. Jackson,

Executive Vice President, Rivers System Operations & Environment.

[FR Doc. 03–1697 Filed 1–24–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pueblo, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on Interstate 25 in Pueblo, Colorado, from south of Pueblo Boulevard/State Highway 45 (Milepost 94) to north of U.S. Highway 50/State Highway 47 (Milepost 102).

FOR FURTHER INFORMATION CONTACT: Chris Horn, Federal Highway

Administration, 555 Zang Street, Suite 250, Lakewood, Colorado 80228–1010. Telephone (303) 969–6730 x383.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an Environmental Impact Statement (EIS) for a proposal to improve a 7-mile segment of Interstate 25 (I–25) in and near Pueblo, Colorado. Improvements are necessary to address a deteriorating roadway and bridges with inadequate geometrics, safety, and existing and future traffic demand.

Alternative under consideration include taking no action, reconstruction of the interstate on essentially the existing alignment, and reconstruction on existing and new alignment. These alternatives are further described as follows:

—*No Action Alternative*—This alternative provides only for minor improvements, repairs, and other maintenance actions. The existing four-lane highway will otherwise remain unchanged.

—*Existing I–25 Alignment Alternative*—This alternative consists of reconstructing I–25 to six lanes on essentially the same location, reconfiguring and eliminating access points to the interstate to improve safety, and providing other improvements to the local street system to enhance system connectivity and traffic movement near the interstate.

—*Modified I–25 Alignment Alternative*—This alternative consists of rebuilding I–25 to six lanes and providing the other improvements included in the Existing Alignment Alternative, except the alignment would be shifted to accommodate different interchange configurations.

Incorporated into and studied with the build alternatives will be Transportation System Management strategies and design variations of grade and alignment.

The preliminary alternatives have been developed with the cooperation of public and agency work groups, and will be developed further during the preparation of the EIS, in conjunction with the FHWA, CDOT, and other federal and state agencies, the City of the Pueblo, the County of Pueblo, the Pueblo Area Council of Governments, and residents of the community.

The public will be invited to participate in project scoping to ensure that the full range of issues are considered and all significant issues are identified. The location and time of the scoping meeting will be scheduled during the month of February 2003 and will be announced in the local media. Public meetings will occur throughout the development of the EIS and a public hearing will be held. Prior to the hearing the draft EIS will be available for public and agency review and comment. Public notice will be given of the time and place of all public meetings and the hearing.

Comments or questions regarding this proposed action and the EIS should be directed to FHWA at the address provided above.

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

Issued on January 16, 2003.

William C. Jones,

Division Administrator, Lakewood, CO.

[FR Doc. 03–1572 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR–810, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5076; FAX: 202–366–6988, or E–MAIL: *richard.walker@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Inventory of American Intermodal Equipment.

OMB Control Number: 2133–0503.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of U.S. steamship and intermodal equipment leasing companies.

Form(s): None.

Abstract: This collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment. Further, this collection is intended to assure that containers and related intermodal equipment are obtainable in the event of a national emergency.

Annual Estimated Burden Hours: 66 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 21, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–1714 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Meetings of the Board

Time and Date: 10 a.m., Thursday, January 30, 2003.

Place: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

Status: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

Matters to be Considered: STB Finance Docket No. 34178, *Dakota,*

Minnesota & Eastern Railroad Corporation and Cedar American Rail Holding, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation.

STB Finance Docket No. 33697, *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail.* STB Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL.*

STB Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.*

STB Docket No. AB–448 (Sub-No. 2X), *SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton and Peoria Counties, IL.*

STB Docket No. AB–565 (Sub-No. 11X), *New York Central Lines, LLC—Abandonment Exemption—in Lake County, OH.*

STB Docket No. AB–55 (Sub-No. 617X), *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Lake County, OH.*

STB Finance Docket No. 34114, *Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento.*

STB Finance Docket No. 34304, *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.*

STB Ex Parte No. 282 (Sub-No. 20), *Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights.*

Contact Person for More Information: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202)565–1596, FIRS:1–800–877–8339.

Dated: January 22, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1889 Filed 1–23–03; 12:30 pm]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34308]

Central Midland Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company

Central Midland Railway Company (CMRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 8.65 miles of rail line and related industrial tracks currently owned and operated by Union Pacific Railroad Company (UP). The rail line, known as the Lackland Sub-Division, extends from milepost 10.35 at Rock Island Junction, MO, to milepost 19, located west of Vigus, MO. CMRC certifies that the projected annual revenues from the leased line will not result in the creation of a Class I or Class II rail carrier. The effective date of the exemption was January 15, 2003 (7 days after the notice was filed) and the parties expected to consummate the transaction on January 19, 2003.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34308, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John Broadley, John H. Broadley & Associates, 1054 31st Street NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1612 Filed 1–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Port Security Grant Program; Application Notice Describing the Categories of Interest and Establishing the Closing Date for Receipt of Applications Under the Port Security Grant Program—Round 2

AGENCY: Transportation Security Administration, Department of Transportation.

ACTION: Notice inviting applications for the Port Security Grant Program.

SUMMARY: The purpose of the Port Security Grant Program is to support efforts for port security at critical national seaports in the areas of security assessments and mitigation strategies, enhanced facility and operational security.

The Port Security Grant Program will fund projects in two categories: (1) security assessments and mitigation strategies, and (2) enhanced facility and operational security to include proof-of-concept projects. Transportation Security Administration is coordinating with the Maritime Administration and the U.S. Coast Guard in this effort. Applicants may be submitted by critical national seaports/terminals/vessels (commuter or ferry service) as specified in the Broad Agency Announcement. Authority for this program is contained in the Department of Defense Appropriations Act for FY 2002, Pub. L. 107–117, 115 Stat. 2230 and FY 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 State. 820.

DATES: The program announcements and applications for the Port Security Grant Program—Round 2 are expected to be available on or about January 14, 2003. Applicants must be received on or before 2 p.m. EST, February 27, 2003.

ADDRESSES: The Broad Agency Announcement, application and instructions for preparing and submitting an application for the Port Security Grant Program will be available through the Internet at *https://www.portsecuritygrants.dottsa.net.*

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration, Office of Maritime and Land Security, 400—7th Street, SW., TSA–8, Washington, DC 20590, (202) 772–1118, email: *Mary.Heying@tsa.dot.gov* or, Ms. Tracey Ford, Grants Officer, Maritime Administration, Office of Acquisition, 400—7th Street, SW., Room 7310, Washington, DC 20590; (202) 366–1744, email: *Tracey.Ford@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: Total anticipated funding available for Port Security Grant Program—Round 2 is $104,093,293. This amount does not include funding for Port Incident Training and Exercises, which will be addressed separate from this program and is not covered by this Announcement. Awards under this program are subject to availability of funds.

Port Security Grant Program—Round 2 Categories

Category 1: Security Assessments and Mitigation Strategies—Award based on proposed security assessments that ascertain vulnerabilities of physical or operational security of a port, multiple terminals, terminal, or vessel (commuter or ferry service) and identify mitigation strategies.

Category 2: Enhanced Facility and Operational Security—Including but not limited to facility/terminal/vessel (commuter or ferry service) access control, physical security, cargo security and passenger security. Consideration will also be given to proof-of-concept projects, which can demonstrate how security would be improved/enhanced, by their implementation.

Dated: January 21, 2003.

J.M. Loy, ADM,

Under Secretary of Transportation for Security.

[FR Doc. 03–1783 Filed 1–24–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service; Issues for Consideration

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The President has clearly outlined the mission of this Commission in Executive Order No. 13278. According to the Executive Order, the Commission must consider the following issues: (1) The role of the Postal Service in the 21st century and beyond; (2) the flexibility that the Postal Service should have to change prices, control costs, and adjust service in response to financial, competitive, or market pressures; (3) the rigidities in cost or service that limit the efficiency of the postal system; (4) the ability of the Postal Service, over the long term, to maintain universal mail delivery at affordable rates and cover its unfunded liabilities with minimum exposure to the American taxpayers; (5) the extent to which postal monopoly restrictions continue to advance the public interest under evolving market conditions and the extent to which the Postal Service competes with private sector services; and (6) the most appropriate governance and oversight structure for the Postal Service.

The Executive Order also charges the Commission with considering ''such other issues relating to the Postal Service'' that the Commission determines are appropriate subjects for review.

During this process of examination, the Commission is committed to ensuring that every affected and interested party has an opportunity to share its views and concerns with us. Any party that wishes to submit a written statement on any issue or issues that fall within the established scope of the Commission's mission is strongly encouraged to do so. The Commission has established three methods by which statements can be submitted for consideration and review:

1. Transmission by Email to the following address: *pcusps_comments@do.treas.gov.* Statements can be embedded in the Email as ASCII text or sent as a MS Word or ASCII text attachment. Do not include artwork or other graphic elements.

2. Stored on 3½ inch high density computer disk as a MS word or ASCII text document (Windows format only) and mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

3. Typewritten statements may be mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

DATES: Email transmissions must be received by the Commission no later than 5 p.m. on Wednesday, February 12. Mailed submissions must be postmarked no later than 5 p.m. on Wednesday, February 12.

FOR FURTHER INFORMATION CONTACT: Randall Lewis of the Commission staff at (202) 622–6075.

SUPPLEMENTARY INFORMATION: The Commission encourages parties to limit their statements to a maximum length of 25 pages of double-spaced written text. Any statement exceeding 15 pages in length should be accompanied by a one-page ''executive summary.'' Please be aware that the Commission may, at its discretion, post any statements it receives on the Commission's website at *http://www.treas.gov/offices/domestic-finance/usps.*

Dated: January 21, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–1689 Filed 1–24–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Pools and Associations—Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Pools and Associations—Annual Letter''.

DATES: Written comments should be received on or before March 28, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East-West Highway, Hyattsville, Maryland 20872, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(C)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Pools and Associations—Annual Letter.

OMB Number: 1510–0008.

Form Number: None.

Abstract: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 150.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: January 16, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–1672 Filed 1–24–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''States Where Licensed for Surety''.

DATES: Written comments should be received on or before March 28, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East-West Highway, Hyattsville, Maryland 20872, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, ''Surety Companies Acceptable on Federal Bonds''.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: January 16, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–1673 Filed 1–24–03; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 68, No. 17

Monday, January 27, 2003

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14129; Airspace Docket No. 02–ACE–14]

Proposed Establishment of Class E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO

Correction

In proposed rule document 03–1133 beginning on page 2462 in the issue of Friday, January 17, 2003 make the following correction:

§71.1 [Corrected]

On page 2463, in the third column, in §71.1, in the first line, ''(Lat. 38°38′28″ N.,'', should read, ''(Lat. 38°35′28″ N.,''.

[FR Doc. C3–1133 Filed 1–24–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14221; Airspace Docket No. 03–ACE–2]

Modification of Class E Airspace; Sikeston, MO

Correction

In rule document 03–1132 beginning on page 2424 in the issue of Friday, January 17, 2003 make the following corrections:

1. On page 2425, in the third column, ''**List of Subjects in 14 CFR Part 71**'' should read as set forth here.

§71.1 [Corrected]

2. On the the same page, in the same column, in §71.1, ''**ACE MO E Sikeston, MO** '' should read, ''**ACE MO E5 Sikeston, MO**''.

[FR Doc. C3–1132 Filed 1–24–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
January 27, 2003

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA76

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings; notice of close of record.

SUMMARY: The proposed rule would allow the use of intake air passing through belt air courses (belt air) to ventilate working sections and areas where mechanized mining equipment is being installed or removed in underground coal mines. The use of belt air, under the conditions set forth in the proposed rule, would maintain the level of safety in underground mines while implementing advances in mining technology. This proposed rule would amend the existing safety standards for ventilation of underground coal mines. The proposed rule would also revise other standards.

DATES: Comments must be received on or before March 28, 2003. Submit written comments on the information collection requirements by March 28, 2003.

The public hearing dates and locations are listed in the Public Hearings section below under **SUPPLEMENTARY INFORMATION**. If individuals or organizations wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates.

The post-hearing comment period will close 30 days after the last public hearing on June 30, 2003.

ADDRESSES: *Comments:* Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.HTM.*

Information Collection Requirements

Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* By mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.* You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.HTM.*

You may obtain copies of the proposed rule and the Preliminary Regulatory Economic Analysis (PREA) in alternative formats by calling this number. The alternative formats available are either a large print version of these documents or electronic files that can be sent to you either on a computer disk or an attachment to an e-mail. The documents also are available on the Internet at *http://www.msha.gov/REGSINFO.HTM.* We intend to place the public comments on these documents on our website shortly after we receive them.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

The public hearings will begin at 9 a.m. and end after the last scheduled speaker speaks (in any event not later than 5 p.m.) on the following dates at the locations indicated:

Date	Location	Phone
April 29, 2003	Holiday Inn-Birmingham Airport, 5000 10th Avenue North, Birmingham, AL 35212	(205) 591–6900
May 1, 2003	Holiday Inn Lexington-North, 1950 Newton Pike, Lexington, KY 40305	(859) 233–0512
May 13, 2003	Country Inn & Suites By Carlson, 105 Alex Lane, Charleston, WV 25304	(304) 925–4300
May 15, 2003	Holiday Inn at the Meadows, 340 Racetrack Road, Washington, PA 15301	(724) 222–6200
May 29, 2003	Holiday Inn Grand Junction, 755 Horizon Drive, Grand Junction, CO 81506	(970) 243–6790

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's Home Page at *http://www.msha.gov* at *http://www.msha.gov,* under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

II. Background

A. Events Leading to Agency Action

We are proposing to amend 30 CFR 75.301, 75.371, 75.372, and 75.380 of our existing safety standards for underground coal mines. The proposed rule also would revise existing §§ 75.350, 75.351, and 75.352. These modifications are proposed in accordance with § 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 957.

MSHA published a proposed rule to revise the safety standards for ventilation of underground coal mines

in the **Federal Register** on January 27, 1988 (53 FR 2382). Included in that proposed rule were provisions to allow air coursed through the belt entry(ies) to ventilate working places. That proposed rule would have required mine operators to install carbon monoxide (CO) sensors in the belt entry.

In response to public comments submitted to the Agency on the January 27, 1988 proposed rule, we held six public hearings in June 1988 with the rulemaking record closing in September 1988. Based on public comments received during this period, MSHA's Assistant Secretary called for a thorough review of safety factors associated with the use of air in the belt entry in the working places in March 1989. MSHA completed this review and announced in an August 25, 1989 Notice in the **Federal Register** (54 FR 35356), the availability of the Belt Entry Ventilation Review (BEVR) Report. The report concludes that'' * * * directing belt entry air to the face can be at least as safe as other ventilation methods provided carbon monoxide monitors or smoke detectors are installed in the belt entry.''

After the BEVR report was issued, we reopened the ventilation rulemaking record and held a seventh public hearing in April 1990, to receive public comment on issues raised in the report. The reopened ventilation rulemaking record for the 1988 proposed rule closed in May 1990.

Comments received during and after the seventh public hearing expressed widely divergent views on the recommendations of the BEVR Committee. Commenters representing industry and academia stated, for the most part, that the use of air in the belt entry provides positive ventilation and reduces the possibility of a methane build-up in the belt entry. Commenters from labor, on the other hand, maintained that the use of air in the belt entry reduces safety due to increased fire hazards and greater dust levels.

Due to these divergent views, when the ventilation rule for underground coal mines was finalized in 1992, it did not include provisions that would have allowed mine operators to use belt air to provide additional intake air to working sections. MSHA's existing standards do not allow this practice except as approved on a mine-specific basis through the petition for modification process (30 CFR part 44) or when approved by the MSHA district manager for mines opened prior to March 30, 1970. The final ventilation rule retained the requirements of the existing 30 CFR 75.326.

MSHA decided that the use of air in the belt air course (belt air) to ventilate working places should continue as an independent rulemaking effort. As part of this effort, the Secretary of Labor appointed an Advisory Committee in January 1992 and charged it to make recommendations concerning the conditions under which air in the belt entry could be safely used in the face areas of underground coal mines. This committee was designated as the Department of Labor's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Areas of Underground Coal Mines and Related Provisions (Advisory Committee). The Advisory Committee held six public meetings over a six-month period. After reviewing an extensive amount of material, the Advisory Committee concluded that air in the belt entry could be safely used to ventilate working places in underground coal mines, provided certain precautions were taken.

The Advisory Committee made twelve recommendations to support this conclusion. The Advisory Committee submitted its report to the Secretary of Labor in November 1992. We published a December 2, 1992 Notice (57 FR 57078) in the **Federal Register** announcing the availability of the Advisory Committee's final report and stated that we would review its recommendations.

In the preamble of the rule proposed today, we discuss the recommendations of the BEVR Report and the Advisory Committee. The proposed rule also incorporates MSHA experience with petitions for modification under § 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

In instances where we have not followed a recommendation made in the BEVR or Advisory Committee Reports, we either have determined existing standards are adequate to address the issue raised in the recommendation or believe that mining technology has advanced making the recommendation moot. In either case, we provide an explanation in this preamble.

B. Agency Experience

Since the early 1970's, mine operators have used Atmospheric Monitoring Systems (AMSs) to monitor certain aspects of the mine atmosphere. These systems typically can measure environmental parameters related to mine ventilation, air quality, and fire detection. An AMS, equipped with the proper sensors, can measure concentrations of combustible and toxic gases, oxygen levels, air velocity, and products of combustion, such as carbon monoxide (CO) or smoke. Existing § 75.351 (Atmospheric monitoring system), § 75.323 (Actions for excessive methane), § 75.340 (Underground electrical installations), and § 75.362 (On-shift examination) incorporated this technology into underground coal mine safety standards. This technology is the basis for granting petitions for modification to § 75.350 (Air courses and belt haulage entries). It allows close monitoring of the mine atmosphere when belt air is coursed to working places.

As AMSs have become more sophisticated, they have employed computer technology to transmit environmental measurements from remote locations to attended mine locations. These systems generate alarms, store and catalog data, and provide reports. Many computer-based monitoring systems have other capabilities besides atmospheric monitoring. Some systems monitor equipment status and, sometimes, provide control signals as well. Such applications improve surveillance of production and haulage, equipment maintenance, and other related management information.

During the last 15 years, MSHA has evaluated, through the petition for modification process, the safe use of belt air as intake air. This process permits a mine operator to petition that the application of 30 CFR § 75.350 be modified at a particular mine.

MSHA has granted approximately 90 petitions for modification to use belt air to ventilate working sections. MSHA grants such a petition when it determines that a mine operator has an alternative method which provides the same measure of safety protection as the existing standard, or when the existing standard would result in diminished safety protection to miners.

Only after a thorough on-site investigation verifying that the use of belt air is at least as safe as the existing safety standard does the Agency grant each petition. In the Agency's evaluation of the use of belt air, MSHA concluded that belt air can be safely used, provided that certain conditions are met. Specifically, the Agency found that the safety concerns associated with belt air use are sufficiently addressed by the proper installation, operation, examination, and maintenance of AMSs as part of a comprehensive safety program that contains other requirements. Petitions for modification of 30 CFR 75.350 (belt air petitions) contain the requirement that a mine operator install an AMS to monitor the mine atmosphere.

Mine operators filing a petition for modification under § 75.350 generally request the use of belt air to ventilate active working places dependent upon the installation of an AMS with CO sensors for early-warning fire detection in the belt entry. AMSs are also currently used for other reasons. Some mine operators petitioned the Agency under Section 101(c) of the Mine Act to install an AMS with CO sensors to comply with the requirements of § 75.1103 (Automatic fire warning devices). Existing regulations have also used an AMS as an optional choice for specific functions, such as monitoring for methane, CO, and smoke.

Mandated petition requirements and existing regulations have placed a greater reliance on AMSs' performance. Typically, an AMS is composed of a central control station that includes a computer with data storage, software, a display, a printer, etc.; a communication network or telemetry system that includes signal conditioning equipment, multiplexers, drivers, repeaters, data line, etc.; and transducers or sensors that measure the value of a given physical parameter.

The Advisory Committee recommended that MSHA should move forward with the development and promulgation of approval schedules for early-warning fire detection systems, such as AMSs. In lieu of adopting this recommendation, we propose to require that components of the system's sensors be listed or certified by a nationally recognized testing laboratory (NRTL) or approved by the Secretary. The standards used by the NRTLs to list or certify the sensors are American National Standards.

As specified in § 75.1103–2(a), MSHA currently requires that components of automatic fire sensors in belt entries be listed or certified by a NRTL or approved by the Secretary. We propose to expand this listing or certification requirement to include methane sensors. We also propose that the components can be approved by the Secretary, allowing MSHA to accept new or unique technology that has not yet been approved by a NRTL. This would help assure that new technology can be introduced into mining without delay. The current program for Evaluation of Mine-Wide Monitoring Systems and Barrier and Sensor Classifications described in MSHA's Program Circular PC–4003–0 would remain in effect. A copy of this program circular can be obtained from the Approval and Certification Center in Triadelphia, West Virginia.

Currently, an AMS must comply with the 1967 National Fire Alarm Code (§ 75.1103–2; Automatic fire sensors approved components; installation requirements). In this proposed rule, MSHA is soliciting comments on whether AMS components and the aforementioned automatic fire sensor systems should comply with appropriate sections of the 1999 National Fire Alarm Code. The National Fire Alarm Code is also an American National Standard.

Reportable Belt Entry Fires

In developing this proposed rule, MSHA reviewed the history of reportable belt entry fires to evaluate the effectiveness of various types of detection methods and the causes of these fires. Section 50.2(h)(6) of 30 CFR requires that mine operators report mine fires that are not extinguished within 30 minutes of their discovery. We are aware that fires of less than 30 minutes in duration occur. Where documentation, such as official reports or memoranda, could be found about these short-duration fires, we also considered them in developing this proposed rule. Often slightly different circumstances in these short duration fires would have resulted in a potentially serious reportable fire.

Since 1970, 75 reportable mine fires have occurred in belt entries. Seventeen of these occurred in mines where belt air ventilated working places (23%). A review of the accident reports for these 17 fires showed that nine occurred in mines that used only an AMS with CO sensors for fire detection; two occurred in mines that used only point-type heat sensors (PTHS) for fire detection; and two occurred in mines using both an AMS with CO sensors and PTHS for fire detection. Reports of the remaining five fires did not state the type of fire detection system in use. However, based on the dates of the fires (1972—1974) and the fact that CO systems were not in use before 1975, four of these mines probably used PTHS for fire detection.

The first reportable belt entry fire in a mine equipped with an AMS occurred in 1983 at the Jim Walters No. 7 Mine. Since then, we have investigated 16 belt entry fires in AMS equipped mines (10 in mines that used air in the belt air course to ventilate working places and 6 in mines that did not). Two of these mines had both AMS and PTHS installed in the belt entry. Of the 16 fires occurring in belt entries equipped with an AMS, the AMS detected all of the fires. Instances occurred when the AMS was not properly utilized or responded to by mine personnel (*e.g.*, alarms were disconnected or were ignored). Sometimes, although the AMS functioned as intended and provided notification of a fire, the fire was detected by sight or smell before detection by the AMS.

The first reportable belt entry fire detected with a PTHS system occurred in 1980 at the Peabody No. 10 Mine. From 1970 to date, 43 fires occurred in belt entries of mines equipped with PTHS. This includes the two mines with both AMS and PTHS. Of the 43 fires occurring in belt entries equipped with PTHS, the PTHS reportedly detected only six fires. Table 1 lists the reportable belt entry fires included in this analysis.

TABLE 1.—REPORTABLE CONVEYOR BELT ENTRY FIRES, 1970–2002

	Mine name	Date	Sensor type	Fire detected by . . .	Alert & alarm (PPM)	Belt air in working place	Belt running
1	Geneva	1/20/70	No Record	Sight and/or Smell		No	Yes
2	Kermit No 1	8/7/70	No Record	Sight and/or Smell		No	No
3	Rainbow No 7	10/25/70	No Record	Sight and/or Smell		No	No
4	Castlegate No 4	12/14/70	No Record	Sight and/or Smell		No	No
5	Jones Fork	12/27/70	No Record	Sight and/or Smell		No	No
6	Kenilworth	7/13/71	No Record	Sight and/or Smell		No	No
7	Pioneer	12/26/72	No Record	Sight and/or Smell		Yes	No
8	Colver	8/22/73	No Record	Sight and/or Smell		Yes	Yes
9	Bethlehem, No 31	10/29/73	No Record	Sight and/or Smell		Yes	No
10	Fedscreek, No 2	11/20/73	PTHS	Sight and/or Smell		No	No
11	Wentz No 11	6/29/74	No Record	Sight and/or Smell		Yes	No
12	Jewell Ridge No 1	4/8/76	PTHS	Sight and/or Smell		Yes	No
13	Alpine	12/9/76	PTHS	Sight and/or Smell		No	No

TABLE 1.—REPORTABLE CONVEYOR BELT ENTRY FIRES, 1970–2002—Continued

	Mine name	Date	Sensor type	Fire detected by . . .	Alert & alarm (PPM)	Belt air in working place	Belt running
14	FMV No 1	12/10/76	PTHS	Sight and/or Smell		No	No Record
15	Kopperston No 1	3/20/77	PTHS	Sight and/or Smell		No	No Record
16	Florence No 1	7/13/77	PTHS	Sight and/or Smell		No	No
17	Island Creek No 9E	9/23/77	PTHS	Sight and/or Smell		No	No
18	Camp No 1	3/14/79	PTHS	Sight and/or Smell		No	No
19	Orient No 4	11/22/79	PTHS	Sight and/or Smell		No	No
20	Peabody No 10	1/12/80	PTHS	PTHS		No	No
21	Raccoon No 3	9/7/80	PTHS	Sight and/or Smell		No	Yes
22	Lancashire, No 24–D	11/1/80	PTHS	PTHS		No	No Record
23	Bull Creek No 4	12/15/80	PTHS	Sight and/or Smell		No	Yes
24	Central Appalachian No 4.	11/7/81	PTHS	Sight and/or Smell		No	No
25	Beatrice	11/25/81	PTHS	Sight and/or Smell		Yes	No Record
26	Star North	12/16/81	No Record	Sight and/or Smell		No	No Record
27	D. O. & W.	2/3/82	PTHS	Sight and/or Smell		No	No
28	Newfield	3/4/82	PTHS	PTHS		No	No
29	Cannelton No 8	3/26/82	PTHS	Sight and/or Smell		No	No
30	V. P. No 2	5/21/82	No Record	Sight and/or Smell		No	No
31	JWR No 7	3/15/83	CO Sensor	AMS	10 & 15	Yes	No Record
32	Emerald No 1	12/19/83	PTHS	Sight and/or Smell		No	Yes
33	Beehive	12/29/83	NONE	Sight and/or Smell		No	No
34	Gateway	1/18/84	PTHS	Sight and/or Smell		No	No
35	Camp No 2	1/18/84	No Record	Sight and/or Smell		No	No
36	Duncan No 3	4/16/84	PTHS	Sight and/or Smell		No	No
37	Allied No 2	8/8/84	PTHS	Sight and/or Smell		No	No Record
38	Shawnee	1/30/85	PTHS	Sight and/or Smell		No	No
39	JWR No 7	3/26/85	CO Sensor	AMS	10 & 15	Yes	No Record
40	JWR No 4	5/4/85	CO Sensor	AMS	10 & 15	Yes	No Record
41	Fountain Bay No 1	5/6/85	PTHS	Sight and/or Smell		No	No Record
42	Pyro No 9, Wheatcroft	8/18/85	PTHS	Sight and/or Smell		No	No Record
43	Apache No 2	8/23/85	PTHS	Sight and/or Smell		No	No Record
44	Shoemaker	1/4/86	PTHS	Sight and/or Smell		No	No Record
45	TLC No 1	6/23/86	No Record	Sight and/or Smell		No	No Record
46	Old Ben 21	11/6/86	PTHS	Sight and/or Smell		No	No Record
47	Florence No 1	11/27/86	PTHS	PTHS		No	No
48	Beckley	4/1/87	CO Sensor	Sight and/or Smell & AMS.		Yes	No
49	Florence No 1	10/20/87	PTHS	Sight and/or Smell		No	No
50	Blazing Saddles No 1	12/9/87	PTHS	Sight and/or Smell		No	Yes
51	Marianna No 58	3/7/88	CO Sensor & PTHS	ANS & Sight and/or Smell.	UNK	Yes	Yes
52	Florence No 1	5/9/88	PTHS	Sight and/or Smell		No	No
53	Sinclair Slope UG No 2	5/13/88	PTHS	Sight and/or Smell		No	No Record
54	Kopperston No 2	8/20/88	PTHS	Sight and/or Smell		No	No
55	Brent No 1	11/15/88	PTHS	Sight and/or Smell		No	No Record
56	Eighty Four Complex	7/24/89	CO Sensor	AMS	7 & 10	Yes	No Record
57	Baldwin	2/8/90	PTHS	PTHS		No	No Record
58	Florence No 2	4/11/90	PTHS	Sight and/or Smell		No	No Record
59	Greenwich No 2	6/18/90	PTHS	Sight		UNK	
60	Sunnyhill No 9 South	7/5/90	PTHS	PTHS		No	No
61	McElroy	1/2/92	No Record	Sight and/or Smell		No	Yes
62	Dilworth	1/22/92	CO Sensor & PTHS	AMS	10 & 15	Yes	No
63	Jen No 30	3/9/92	PTHS	Sight and/or Smell		No	No
64	Montcoal No 7	5/9/92	CO Sensor	AMS & Sight and/or Smell.	10 & 15	No	Yes
65	Splashdam	10/11/92	CO Sensor	AMS & Sight and/or Smell.	UNK	Yes	Yes
66	Bullitt	3/9/94	CO Sensor	AMS	4 & 8	Yes	No
67	Eagle Valley	11/28/94	CO Sensor	AMS	10 & 15	No	Yes
68	Ohio No 11	5/5/95	CO Sensor	AMS	10 & 15	No	Yes
69	Old Ben 26	1/1/97	CO Sensor	AMS & Sight and/or Smell.	10 & 15	No	No
70	Roadside North Portal	1/3/98	CO Sensor	AMS	10 & 15	Yes	No
71	Zeigler No 11	3/18/98	PTHS	Sight		No	Yes
72	Shoal Creek	9/3/99	CO Sensor	AMS	5 & 10	Yes	Yes
73	Paramount No 21	3/7/00	PTHS	Sight		No	
74	Darmac No 3	1/30/02	PTHS	Sight		No	
75	Blue Diamond No 77	4/17/02	CO Sensor	AMS	5 & 10	No	No

AMS—Atmospheric Monitoring System.
CO—Carbon Monoxide.
PTHS—Point Type Heat Sensor.

Nonreportable Belt Entry Fires

We have investigated some mine fires of less than 30 minutes duration, even though we do not require reporting of such fires. Since 1987, we have investigated 13 nonreportable belt entry fires in mines that used an AMS. Three of these mines used both a CO-based AMS and PTHS. Of these 13 fires, four were detected by the AMS, two were detected by sight or smell followed by detection by the AMS, one was detected by the AMS followed by a heat sensor, and six were detected by sight or smell alone. Anecdotal information suggests that AMS have also detected other events, such as hot belt rollers and belts running in coal before a fire occurred. Table 2 provides information on nonreportable belt entry fires.

TABLE 2.—INVESTIGATED NONREPORTABLE (<30 MINUTES) BELT ENTRY FIRES WHERE AMS USED

	Mine name	Date	Sensor type	Fire detected by * * *	Alert alarm (PPM)	Belt air in working place
1	Sunnyside No 3	5/13/87	CO Sensor & PTHS	Sight and/or Smell	No Record	
2	McClure No 1	4/14/90	CO Sensor	Sight and/or Smell	No Record	
3	McClure No 1	4/15/90	CO Sensor	Sight and/or Smell	No Record	
4	Bethlehem No 84	6/21/91	CO Sensor	AMS	4, 7 & 10	Yes
5	Cambria Slope 33	11/1/91	CO Sensor	Sight and/or Smell	No Record	
6	JWR No 5	5/25/92	CO Sensor	AMS	10 & 15	Yes
7	Blacksville No 2	3/15/92	CO Sensor &PTHS	AMS Then PTHS	10 & 15	
8	Air Quality	2/22/95	CO Sensor	AMS	10 & 15	
9	Lightfoot	10/95	CO Sensor	Sight and/or Smell	No Record	
10	Bailey	6/19/96	CO Sensor & PTHS	Sight and/or Smell Then AMS	10 & 15	
11	Foidel Creek	10/22/96	CO Sensor	AMS	7 & 11.7	
12	Shoemaker	1/6/00	CO Sensor	Sight	10 & 15	No
13	Wabash	10/15/01	CO Sensor	Sight and/or Smell Then AMS	10 & 15	No

AMS—Atmospheric Monitoring System.
ACO—Carbon Monoxide.
PTHS—Point Type Heat Sensor.

III. Summary and Considerations of the Advisory Committee Report, Recent Belt Air Petitions, and BEVR Report

The following summaries are provided to compare the proposed rule with the recommendations made in the Advisory Committee Report and the BEVR Report, as well as requirements contained in recent belt air petitions.

A. Overview of Advisory Committee Recommendations and Proposed Rule Sections

The following section reviews recommendations made by the Advisory Committee and cites applicable proposed rule language. The proposed rule includes the vast majority of the Advisory Committee recommendations. Where the recommended conditions are not included, we discuss MSHA's reasons for not proposing them as part of this rulemaking. In addition, the recommendations are specifically addressed in the Section-by-Section Analysis.

There are three basic issues addressed by the Committee report, with a number of recommendations under each issue. These issues are:

1. The conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places;

2. Minimum air velocities in belt entries; and

3. Ventilation of escapeways.

B. Advisory Committee Recommendations

Advisory Committee Recommendation 1. Belt haulage entries can be safely used as intake air courses to ventilate working places provided additional safety and health conditions are met.

The Advisory Committee affirmed the recommendation that belt air could be safely used providing carbon monoxide or smoke detectors were installed in the belt entry. The Agency agrees, and is proposing to modify § 75.350 to allow the use of belt air provided certain requirements are met, including the installation of an AMS, equipped with carbon monoxide monitors or smoke detectors.

Advisory Committee Recommendation 2. When belt haulage entries are used to ventilate working places, one of the additional conditions is the presence within the belt haulage entry of an early-warning fire detection system.

Included in this recommendation are 14 items for the Agency to consider in administering the implementation of early-warning fire detection systems.

Item 1. Actions Before Using Belt Air for Face Ventilation

The Advisory Committee recommended:

''Prior to belt haulage entries being used to ventilate working places:

(a) Proposed changes should be outlined in the mine ventilation plan;

(b) Miners shall be trained in the basic principles of the early warning fire detection system and the actions required in the event of a section alarm;

(c) Appropriate personnel responsible for installation, maintenance, operation and inspection of the system should be trained in their duties; and

(d) The early warning fire detection system should be inspected by MSHA.''

For mines currently not using belt air to ventilate working sections (*i.e.*, those without granted petitions), the mines would need to receive MSHA approval to make required changes in their ventilation plans prior to using belt air to ventilate working sections. We propose a requirement for training of miners under § 75.350(b)(2). These specific training requirements could be included in the training required under part 48. Specific training requirements for AMS operators are proposed in § 75.351(q).

We did not include in this proposed rule a separate requirement for MSHA to inspect the fire detection system because AMSs used in belt entries would be inspected as part of normal MSHA inspection activities. The proposed rule includes all other conditions of this Advisory Committee item.

Item 2. Capabilities of the AMS

The Advisory Committee recommended:

''The early warning fire detection system should be capable of:

(a) Monitoring electrical continuity and detecting electrical malfunctions of the system;

(b) Identifying any activated or malfunction sensor; and

(c) Giving notice of a fire for a minimum of four hours after the source of power to the belt is removed, except when power is removed during a fan stoppage or the belt is examined as provided in section 75.1103–4(e)(1) or (2).''

Monitoring circuit continuity and electrical malfunctions is required under proposed § 75.351(c), minimum operating requirements. This is also the section of the proposed rule addressing identification of any activated or malfunctioning sensor. Belt stoppages are addressed in proposed § 75.351(a). The proposed rule includes all conditions of this item.

Item 3. Minimum Velocity and Location of Sensors

The Advisory Committee recommended:

''In mines using belt air to ventilate working places, the minimum velocity in the belt haulage entry should be at least 50 fpm. An early warning fire detection system (low level carbon monoxide or equivalent) in belt haulage entries should monitor the atmosphere at the following locations:

(a) Belt entries utilized as intake aircourses, at intervals not to exceed 1,000 feet;

(b) At the section tailpiece or not more than 50 feet inby the tailpiece on the same split of air;

(c) One sensor at the drive unit area (belt drive, belt take-up, belt tailpiece or combination thereof) not less than 50 feet and not more than 100 feet inby on the same split of air; and

(d) When belt and track are in separate entries and are not separated by stoppings on section panels, a CO (or equivalent) sensor should be placed at the inby end of the section track.''

The proposed rule requirement varies slightly from the Advisory Committee report, which suggested minimum velocities of 50 feet per minute (fpm). Proposed §§ 75.351(e)(1) and (4) contain the requirements for the section tailpiece sensor and at each drive along the belt.

Proposed § 75.351(e)(3) includes the 50 fpm minimum in locations where 1,000-foot sensor spacing is used. However, we have proposed the use of lower air velocities, providing sensor spacing is reduced to 350 feet. These lower air velocities are based on research conducted by the National Institute of Occupational Safety and Health (NIOSH) after the Advisory Committee report was completed.

The Advisory Committee recommended that a sensor be placed at the end of the track when the track and belt are not separated by stoppings. We believe this requirement does not add a significant level of protection because the sensor at the end of the track would monitor the same air as the sensors in the belt entry. Our in-mine studies indicate that there is air movement between these entries in the air course, making monitors in the belt entry sufficient for early detection of contaminants. Therefore we do not propose placing a sensor at the end of the track. We are proposing the installation of sensors in the intake escapeway, separate from belt.

However, we have included in proposed § 75.351(e)(5) a requirement for other monitoring locations required by the district manager and specified in the mine ventilation plan. This provision would require the placement of a sensor at the end of the track if the district manager determines that it is necessary. The proposed rule includes all other conditions of this item.

MSHA agrees that for mines using sensor spacing of 1,000 feet, the minimum velocity of 50 fpm must be maintained. As the Advisory Committee recognized, the air flow rate is an important variable in fire detection. We have proposed a requirement in § 75.352(e) to address situations where less than 50 fpm is measured in mines with 1,000 foot sensor spacing to assure that the ventilation system is returned to proper operation. In these circumstances, a trained person would patrol and monitor the affected area until the air flow is restored.

Item 4. Section Alarms

The Advisory Committee recommended:

''Section alarms should give a visual and audible warning signal on the affected working section if carbon monoxide (or equivalent) reaches the established levels. The section alarm should be at a location where it can be seen or heard by persons working on the section.''

The Advisory Committee stated that section alarms should give a visual and audible signal on the affected working section if CO levels reach 'established levels,' and that section alarms be located where they can be seen or heard. Under proposed § 75.351(c)(4), section alarms would give a visual and audible signal and would need to be located where they can be seen and heard when the CO, smoke, or methane concentration at any sensor reaches the alarm level specified in § 75.351(i).

The proposed rule would not require automatic section alarm activation during alert conditions, but rather only during alarm conditions. MSHA believes the frequency of alert signals could lead to complacency among miners, and it is preferable for other actions, as noted in proposed § 75.352, to occur at alert levels. Proposed § 75.352(b)(1) would require that the sensor activated be identified and an examination begun immediately to determine the cause of the alert signal. The proposed rule meets the recommendation of alarm location included in this item.

Item 5. Responsible Person at Surface

The Advisory Committee recommended:

''At all times when miners are underground a responsible person(s) should:

(a) Be on duty on the surface, so that the alert/alarm signals can be seen or heard;

(b) Maintain a record of each alert and alarm signal and actions taken;

(c) Have 2-way communication with all working sections. When alert and alarm levels are reached, this person should notify personnel at working sections and other personnel who may be endangered;

(d) Be trained in the operation of the early warning fire detection system and emergency communication system.

(e) Be trained in the proper procedures to follow in the event of an emergency or malfunction; and

(f) Take appropriate action upon alarm activation and verification.''

This item contains conditions concerning responses to alert and alarm levels by surface personnel. Proposed § 75.301 defines the responsible person as the AMS operator. The proposed section also requires that the AMS operator be on duty at a location where signals can be seen or heard, and that the operator can respond promptly to the signals. Recordkeeping requirements are included in proposed § 75.351(o), as well as two-way communications in proposed § 75.351(b)(1). Proposed § 75.351(q) requires that all AMS operators receive training in the proper operation of the AMS. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 6—Actions of Personnel Underground Upon Alert/Alarm Activation and Item 7—Actions of Personnel on the Surface Upon Alert/Alarm Activation

The Advisory Committee recommended in Item 6:

''When the early warning fire detection system reaches the alert/alarm mode, an audible and visual alarm signal should activate on the surface at the mine and at the working section(s). When section alert/alarms signals are activated the following actions should be taken:

(a) Alert—When alert levels are reached, the sensor that is activated is identified and section workers inby are notified of an ''alert mode'' and are withdrawn to a safe location

outby the working places, unless the cause is known beforehand not to be a hazard. An examination is then made to determine the cause of the activation.

(b) Alarm—When alarm levels are reached, the sensor that is activated is identified and all persons in the same split of air are withdrawn to a safe location outby the sensor activating the alarm, unless the cause is known beforehand not to be a hazard. An examination is then made and if a hazard exists, the mine Fire Fighting and Evacuation Plan is implemented.

(c) During the alert/alarm mode the belt may, at the discretion of the mine operator, continue to operate until the area is examined.''

And in Item 7 the Advisory Committee stated:

''In the event of an alert, personnel on the surface, except those necessary to investigate the cause of the alert, should not enter the affected area of the mine unless the cause of the alert is known beforehand not to present a hazard. In the event of an alarm, personnel on the surface, except those persons necessary to investigate the cause of the alarm, should not enter any area of the mine unless the cause of the alarm is known beforehand not to present a hazard.''

Actions in response to AMS alert and alarm signals for both underground and surface personnel would be covered by proposed § 75.352. In the event of an alert signal, the sensor activated would be identified and an examination would begin immediately to determine the cause of the alert signal. The Advisory Committee recommended that the section personnel be withdrawn to a safe location outby the working places. MSHA believes that this action is not warranted prior to an examination of the affected sensor. If during the examination of the sensor, a fire hazard is discovered before an alarm level is detected, evacuation should be initiated.

MSHA agrees that alarm activations should necessitate withdrawal of personnel to the sensor outby the sensor in alarm state.

The proposed rule does not address the continuing operation of a belt in the event of alarm activation. While MSHA's experience suggests that belts normally should not be stopped, it is the decision of the mine operator to take whatever actions are needed to protect miners and mine property.

There has been anecdotal evidence to show that combustion of the conveyor belt fabric does not usually occur unless the belt is stopped. Moving conveyor belts, while creating frictional heating, do not normally burn with open flame.

In addition, the proposed rule does not address restrictions on persons entering the mine when either alert or alarm signals occur. MSHA believes that mine operators must be given flexibility in how they respond to emergencies in order to better protect the miners. We believe any persons entering the mine in an emergency should be only those needed to respond to the emergency, as indicated in the mine's emergency evacuation and firefighting program of instruction, § 75.1502 (formerly referred to under § 75.1101–23—Program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills).

Item 8—Avoidance of Nuisance Alarms

The Advisory Committee stated:

''To avoid nuisance alert signals, the District Manager may approve a plan which requires incorporation of reasonable time delays or other techniques (computer/administrative) into the alert/alarm signal system. The Committee determined that experience gained by the Agency during the petition for modification process could be used as a guideline. When a planned activity which may result in CO above the alarm levels being produced, such as cutting, welding, calibration, blasting, major equipment moves requiring the use of diesel equipment, etc., is scheduled, the person in charge of the activity should notify the responsible person at the surface monitoring station of:

(a) The location and type of activity;

(b) The time the activity begins; and

(c) The time the activity is completed.

Anticipated alerts/alarms require notification to sections inby on the same split of air prior to and after planned activities.

A fire check for hot spots is required after cutting and welding is performed. Should hot spots be found, they should be extinguished immediately.''

The Advisory Committee report indicated the use of tools to reduce the frequency of alarms due to non-fire conditions could be effective in maintaining the confidence of miners as well as bolstering the importance of alarms. These tools include time delays and other data analyzing techniques which could prevent the ''cry-wolf'' syndrome, in which alarms are discounted as ''just that diesel scoop'' or ''must be cutting belt structure again.'' MSHA agrees that these tools may be of value.

Proposed § 75.351(m) allows the use of these tools when a demonstrated need exists, while proposed § 75.371(11) requires the method to be included in the approved mine ventilation plan. Time delays are limited to a maximum of three minutes. MSHA experience indicates that this is normally sufficient to account for non-fire signals.

There is technology available that distinguishes the products of combustion produced by diesel engines and by open flame. MSHA encourages the use of such technology to reduce or eliminate nuisance alarms and the need for time delays. We also believe operators should explore implementation of future technological advances. As these technologies evolve, MSHA will encourage their implementation through the mine ventilation plan approval process.

Prior to being approved for use, the operator will be expected to demonstrate the need for such a tool, as well as the expected benefit from using the tool. In this case, records indicating the frequency of alert and alarm signals, as well as the duration of the alert and alarm signals will be of value to the operator. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 9—Fire Fighting and Evacuation Plan Contents; Records and Item 10—AMS Calibration, Testing, Examinations and Records

The Advisory Committee recommended in Item 9:

''Under 30 CFR 75.1101–23(a), the mine Fire Fighting and Evacuation Plan and subsequent revisions should incorporate the operation of the early warning fire detection system and at a minimum, should specify:

(a) The action to be taken to determine the cause of the alert and alarm signals:

(b) The location(s) for withdrawal of miners for alert and alarm signals; and

(c) The procedures to be followed if an alert or alarm signal is activated.

If an alert or alarm is activated, a record should be made of the date, time, location of sensor, concentration at the sensor and the reason for its activation. The records should be reviewed and initialed by management personnel on a monthly basis.''

The Advisory Committee recommended in Item 10:

''In order to maintain the early warning fire detection monitoring system in proper operating condition, the following activities should be performed:

(a) The monitoring system and sensors should be visually examined at least once each coal producing shift;

(b) Each sensor should be calibrated with a known concentration of carbon monoxide (or equivalent) and air mixtures, sufficient to activate the alarm, at intervals not exceeding 31 calendar days;

(c) Alert and alarm signals should be tested for operation at intervals not exceeding 7 days; and

(d) Inspection records should be maintained on the surface, recording the date and time of each weekly test of alert and alarm signals, calibration, and maintenance performed on the system. The records should be maintained for one year and made available to management, MSHA and mine personnel.''

MSHA agrees with the Advisory Committee report that there are specific activities following the activation of

alert and alarm signals that should be covered under the provisions of the approved program of instruction under § 75.1502 (commonly referred to as the mine emergency evacuation and firefighting program of instruction). We have included in proposed §§ 75.351(b)(1), 75.352(a)(2), and 75.352(b)(2), requirements for including these actions and additional information in the approved program of instruction. It is MSHA's experience that the operator can use the data recorded from alert signals, alarms, malfunctions, calibrations, and maintenance as an effective tool for maintaining an effective fire detection system. MSHA is not proposing to require the operator to review and initial records on a monthly basis because we believe that the proposed requirements of § 75.351(o)—recordkeeping and § 75.351(p)—retention period, fulfill the intent of this recommendation. MSHA expects since the ''AMS log'' is available for review by the miners and authorized representatives of the Secretary, that the mine operator will also review the AMS log data.

MSHA is including in proposed § 75.351(n) requirements for examinations, testing, and calibration of the AMS sensors. These are the same requirements recommended by the Advisory Committee. MSHA is proposing in § 75.351(o) recordkeeping requirements for alert and alarm signals, malfunctions, tests, calibrations, and maintenance of the AMS. We intend the visual examination to be completed as part of the on-shift examination already required under § 75.362(b).

Item 11—AMS Malfunction

The Advisory Committee recommended:

''If any portion of the early warning fire detection system malfunctions, the affected belt haulage conveyor may continue to operate. The responsible person should notify all sections affected. Once it has been determined that the cause is a malfunction, a qualified person(s) having access to communications with the responsible person on the surface should patrol the affected area and monitor for carbon monoxide or equivalent with a handheld detector(s) as outlined below for the period of time necessary to identify the problem and make necessary repairs:

(a) If one sensor becomes inoperative, a qualified person should monitor at that location;

(b) If two or more adjacent sensors become inoperative, a qualified person should patrol and monitor the area affected; and

(c) If the complete system becomes inoperative, a sufficient number of qualified persons shall patrol and monitor so the affected belt entries are traveled each hour in their entirety. If the failure lasts more than eight (8) hours, then the MSHA District Manager should be notified immediately.

Handheld carbon monoxide detectors (or equivalent) should be maintained in a working condition, and available for use in a timely manner.''

This item in the Advisory Committee report describes the actions required if any sensor(s) or portions of the AMS system become inoperable for any reason. Proposed § 75.352(d) would require the actions as suggested by the Advisory Committee to be taken. We believe that operators will have an interest in repairing and restoring monitoring capabilities as soon as possible. There is no need to limit the use of hand monitoring since it is considered a safe alternative. For this reason, we are not including a requirement to report to MSHA any malfunction exceeding 8 hours as recommended by the Advisory Committee.

MSHA is proposing to require the immediate reporting to the surface of any contaminant measurements exceeding the appropriate alert and alarm levels. Even when contaminants do not exceed alert and alarm levels, personnel must report the levels to the AMS operator at intervals not to exceed one hour. The proposed rule achieves the intent of the recommendation.

Item 12—Mine Ventilation Map

The Advisory Committee recommended:

''The mine ventilation map should contain the details of the early warning fire detection system, including the type of sensor (CO or equivalent) and the sensor location and should be posted at the mine.''

In proposed § 75.351(b), MSHA would require that a map or schematic be posted. Also, the proposed rule would require the operator to indicate the intended air flow direction at each sensor location on the map. MSHA believes this information will be helpful if evacuation of personnel is necessary. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 13—Smoke Sensors; Slippage Switches

The Advisory Committee recommended:

''In mines using belt air to ventilate working places, slippage switches should be integrated into the early warning fire detection system. Where it is not feasible to do so, the switches should be visually examined each production shift. Smoke sensors (or equivalent) when commercially available, should be installed no more than 100 feet inby each drive.''

MSHA is not adopting this recommendation of the Advisory Committee into its proposed rule. We believe that properly maintained slippage switches do not require monitoring. We would be interested in receiving comments on the merits and drawbacks of this recommendation. Specifically, we solicit comments on:

(1) The benefits of integration of slippage switch monitoring into AMSs for belt air mines;

(2) the cost of such a requirement; and

(3) any difficulty operators may experience in accomplishing this action, if required.

Item 14—Backup Communication

The Advisory Committee recommended:

''The communication system in use at the mine should be capable of providing backup communication to the working section(s). This redundancy may be in the form of; two communication lines, the use of one communication line plus another form of communication (*e.g.*, leaky feeder, trolley, wireless, automatic alert/alarms, etc.), or any other equally effective system(s) selected by the operator.

In operations having only one means of verbal communication:

(a) Transmission lines for the automatic section alarms and phone should be carried in separate entries; and

(b) In the event of failure of the phone system, and the section receives an alarm, miners should be evacuated as required in the mine Fire Fighting and Evacuation Plan.''

MSHA agrees that the communication line should be maintained in an entry other than that used for the AMS data transmission line. In proposed § 75.351(r), we would require that two separate means of communication be maintained from the surface to the working sections and setup or removal areas.

MSHA believes that the AMS data transmission line provides one form of communication, and that a second two-way system should be installed in a separate entry. If the mine's primary two-way system is installed along with the AMS line, a second method of two-way communication would be required. This method could include a second mine phone line. The proposal meets the recommendation of the Advisory Committee for this item.

C. Advisory Committee's Discussion on Velocity Caps

MSHA agrees with the Advisory Committee discussion on this issue, and has proposed in § 75.351(i)(2) that reduced alert and alarm settings may be required for some CO sensor locations. The locations would be specified in the mine ventilation plan according to the requirements in proposed § 75.371(mm).

MSHA has not included any specific document or guideline for reducing these settings. Rather, we agree with the Advisory Committee discussion that the District Manager should use all available information, including

information provided by research, as guidance for reducing the settings for specific locations. This issue must be addressed on a mine-by-mine basis as conditions warrant.

Advisory Committee Recommendation 3—Miners should be trained in the basic principles of the early-warning fire detection system and the actions required in the event of activation of a system alarm. Appropriate personnel responsible for the installation, maintenance, operation, and inspection of the system should be trained in their duties. In the special case of the AMS operator, who is the person responsible for monitoring the system, and, hence, initiating the fire fighting and evacuation plan, MSHA should assure, by examination of competency, the training and its effectiveness received by that person. At any time there are workers underground in an AMS-equipped mine, there should be a trained operator within sight or sound of the control station.

In this proposed rule, MSHA has included training requirements for AMS operators, AMS installation and maintenance personnel, and all miners to assure responses to the AMS alert and alarm signals are timely and effective. MSHA has not included a requirement for competency testing of the AMS operator because each AMS is unique to a specific mine. The mine operator is required to train the AMS operator to respond to the system. The training requirements for AMS operators are proposed in § 75.351(q) and the requirements for training of maintenance personnel are proposed in § 75.351(k). Training of both the AMS operators and maintenance personnel should be conducted in accordance with manufacturer's instructions, as part of the mine operator's maintenance program. These training programs fall under existing 30 CFR 75.160—Training programs and 75.161—Plans for training programs. General training would be required under proposed § 75.350(b)(2). Training is required for all new miners and in annual refresher training required under part 48.

Advisory Committee Recommendation 4—In mines using an AMS as a condition for using air in the conveyor belt entry to ventilate working places, the minimum velocity in the belt entry should be 50 feet per minute.

As previously discussed, MSHA agrees that for spacing of sensors at intervals of 1000 feet, a minimum velocity of 50 fpm is required. For lower velocities, research has shown that a 350-foot spacing can provide adequate early warning. MSHA has included this sensor spacing requirement in proposed § 75.351(e)(3).

Advisory Committee Recommendation 5—The agency should move forward with the development and promulgation of approval schedules for early-warning fire detection systems (including smoke sensors). Approval schedules should include performance standards as well as safety standards and should be flexible enough to permit advances in technology.

MSHA has decided not to develop approval schedules for AMSs. However, we are proposing in § 75.351(l) that the sensors be listed or certified by a nationally recognized testing laboratory (NRTL). The standards used by the NRTLs to list or certify the sensors will be American National Standards. Systems are required by existing § 75.1103–2(b) (Automatic fire sensors; approved components; installation requirements) to meet the 1967 National Fire Code, 72A. This was an American National Standard.

Requiring the NRTL approval will not discourage new technology, as we have also proposed in § 75.351(l) that the components can be approved by the Secretary, allowing MSHA to accept new technology that has not yet been approved by a NRTL. MSHA is also proposing minimum operating requirements in proposed § 75.351(c); minimum installation requirements in proposed §§ 75.351(d) and (e); and operating parameters in proposed §§ 75.351(i) and (j). We agree that the regulation must provide flexibility to allow advances in technology, and believe this approach provides that flexibility. The Agency will continue to evaluate systems for intrinsic safety.

Advisory Committee Recommendation 6—Velocities, both minimum and maximum, should provide air that is capable of containing methane and dust levels at or below the levels specified in the standards. The concentration of respirable dust in a belt conveyor haulageway used to ventilate the working place should not exceed 1.0 mg/m^3 at a point just outby the section tailpiece. The concentration of respirable dust at all other outby locations in the belt haulageways should not exceed 2.0 mg/m^3. Designated areas should be established at appropriate locations in the belt haulageway for dust measurement and should be identified in the ventilation system and methane and dust control plan.

Proposed § 75.350 (b)(3) would require respirable dust levels as recommended by the Advisory Committee, and would require the establishment of permanent designated areas for sampling near section tailpieces. The 2.0 mg/m^3 standard and establishment of designated areas for outby areas already exists in part 70. Methane action levels are addressed in § 75.323.

Advisory Committee Recommendation 7—The minimum air velocity in belt haulage entries in all mines, whether belt air is used to ventilate working places or not, should be established based on the ability of the air current to reduce the potential for methane layering.

MSHA believes that the air velocity in mines utilizing the belt as an intake under § 75.350 will have sufficient velocity to avoid methane layering. However, we believe that layering is no less dangerous in mines not using belt air. Means to address methane layering are already addressed under §§ 75.321 (Air quality) and 75.323 (Actions for excessive methane). No new provisions are included in this proposed rule.

Advisory Committee Recommendation 8—Lifelines should be installed and maintained in all primary and alternate escapeways. Tracks and belts can be treated as acceptable lifelines, provided that, where track switches and belt transfers exist, provisions are made for clear designation of the escape route.

The Advisory Committee recommended that lifelines be installed and maintained in all escapeways. The Advisory Committee heard testimony from several members of the industry to the effect that lifelines are beneficial. However, they also heard that lifelines placed in active entries were quickly destroyed due to normal mining activities and that repair was not considered a priority. Therefore, we have not included a requirement for lifelines in the proposed rule. We solicit comments on the need for, costs of, and the maintainability of, lifelines in escapeways.

Advisory Committee Recommendation 9—Ventilation of the primary and alternate escapeways should consider the interfaces and interrelationships among all aspects of the mining system (*e.g.*, the haulage system, the ventilation system, the production system, etc.). Ventilation systems should be designed and maintained to protect the integrity of the mine atmosphere in the primary intake escapeway. The alternate escapeway should be designed and maintained to maximize the possibilities of escape. Information submitted in the ventilation plan approval should include substantiating data relative to the integrity of the mine atmosphere in the escapeways under normal and pressurized conditions.

The Advisory Committee recognized the importance of protecting the ''integrity of the atmosphere'' in the primary escapeway. In addressing this issue, the Advisory Committee report states, ''it is desirable, even during normal operation of the mine, to maintain the integrity of the mine atmosphere in the escapeways by providing a positive pressure differential between the escapeways and the adjacent entries.'' MSHA agrees that separation of the belt air course from the primary escapeway is essential in

providing miners a safe route to the surface. One method to help accomplish this would be to maintain the primary escapeway at a pressure that is higher than the adjacent entries.

However, the Advisory Committee recognized that, sometimes, it may be difficult to maintain the pressure differential in the proper direction. Because of the difficulty of maintaining the primary escapeway at a higher pressure than an adjacent air course, MSHA has decided not to propose this requirement. MSHA believes that the air quantity in the belt air course and the air quantity in the intake air courses along with the pressure differential between these air courses must be addressed on a mine by mine basis through the mine ventilation plan process (§ 75.370(a)). The intent is to control the total air quantity in the belt air course relative to the other intake air courses and also to control the pressure differential between the air courses. It is vital that the belt air course and the intake escapeway ventilation be addressed as part of the entire mine's ventilation system. The proper balance must be maintained regarding total air quantities in the air courses and pressure differentials between the air courses. This can be achieved on a mine-by-mine basis through the mine ventilation plan process.

In lieu of this requirement, proposed § 75.351(f) would require the mine operator to monitor the intake escapeway air current for fire contaminants at the beginning and end of the section panel.

MSHA has included in these proposed requirements to allow for the use of point feeding to provide air to the belt entry from other intake entries. MSHA agrees with the provisions listed by the Advisory Committee, and believes that proposed §§ 75.350(c) and 75.351(f), along with the existing construction requirements for regulators under § 75.333, (Ventilation controls), achieve the objective of the recommendation.

Advisory Committee Recommendation 10—It is the consensus of the Belt Air Advisory Committee that MSHA proceed rapidly to develop regulations for improved fire resistant belting, including new testing and approval schedules. Notwithstanding the scope of the committee charter, the committee recommends that once available, the improved fire resistant belting material should be used in all underground coal mines.

This issue was placed in a separate rulemaking in 1989. Since that time the number and severity of conveyor belt fires has significantly declined. Only two of the ten conveyor belt fires reported between 1993 and 2002 involved injuries to miners. In both of these fires, the injuries were limited to smoke inhalation. We attribute this decrease in conveyor belt fires to improvements in belt monitoring and to technological advances which have occurred during the past 10 years.

The most notable improvement in belt monitoring is the mining industry's increased use of AMSs in conveyor belt passageways. Monitoring systems in general give advance warning to allow a fire in a belt entry to be detected and addressed sooner, thereby limiting fire damage and injuries to miners. An AMS also provides advanced warning of CO and methane concentrations, thereby alerting mine operators to potentially hazardous situations.

Although AMSs have been in use for many years, these systems have rapidly become more sophisticated, evolving from simple monitors into complex devices with integral computer technology capable of transmitting environmental measurements from remote locations to attended mine locations.

In addition, this proposed rule also reduces alert and alarm levels to 5 and 10 ppm, respectively, from levels specified in existing petitions for modification. Also, sensor spacing has been reduced from 2,000 feet to 1,000 feet. These additional safety requirements increase the level of fire safety in mines that choose to use belt air to ventilate working sections. Therefore, we believe that we have achieved the intent of this recommendation (reduction of belt fires) by lowering the alert and alarm levels to provide increased early warning of the presence of fire contaminants, as well as, reducing the spacing of the sensors.

Advisory Committee Recommendation 11—In mines using belt air to ventilate working places, the alert and alarm levels for AMS should not exceed 5 ppm and 10 ppm CO (or equivalent) above ambient, respectively. The MSHA District Manager may establish lower alert and alarm levels for AMS based upon the sensor type and sensitivity, sensor spacing, air flow, cross-sectional area and local mining conditions. Alerts and alarms should be automatically activated on the surface and on the working section(s) when the CO (or equivalent) levels exceed the established levels.

As previously discussed, proposed § 75.351(i) sets out the maximum alert and alarm levels at 5 and 10 ppm CO respectively. The District Manager can require lower alert and alarm levels according to this same section. The proposed rule meets all of the provisions of this recommendation of the Advisory Committee except automatic alert activation on working sections. In the section-by-section analysis of this preamble, we discuss our reasons for not including automatic alerts to be activated on working sections.

Advisory Committee Recommendation 12—In mines using belt air to ventilate working places, increased emphasis should be placed on belt entry cleanup and conveyor belt maintenance.

MSHA agrees with the Advisory Committee and believes cleanup and maintenance in the belt entry poses no less of a hazard in mines not using belt air. Accumulations of coal at drives due to spillage are prohibited according to existing § 75.400. We are not proposing any additional regulation for belt entry cleanup and maintenance.

D. Preamble Summary—Current Petition Requirements

We reviewed the latest 20 proposed decision and orders (PDOs) for petitions for modification of § 75.350 (Air courses and belt haulage entries) to determine common requirements for using belt air. Two-entry petition mines were not included in this analysis because these mines would still need to file petitions to use a two entry mining system as a result of this rule. The following requirements included in petitions are identified as follows.

TABLE 3.—COMPARISON OF REQUIREMENTS IN RECENT PROPOSED DECISIONS AND ORDERS (PDOS) WITH REQUIREMENTS IN THE PROPOSED RULE

Requirement in PDOS	Number of PDOS	Requirement included in proposed rule
Installation of AMS	20 out of 20	Yes
Spacing 1000 feet	20 out of 20	Yes
Monitor Drives 50–100 feet	20 out of 20	Yes
Monitor splits 50–100 feet	20 out of 20	Yes

TABLE 3.—COMPARISON OF REQUIREMENTS IN RECENT PROPOSED DECISIONS AND ORDERS (PDOS) WITH REQUIREMENTS IN THE PROPOSED RULE—Continued

Requirement in PDOS	Number of PDOS	Requirement included in proposed rule
Monitor Electrical Installations 100 feet	20 out of 20	Yes (50 feet)
Identify activated sensor	20 out of 20	Yes
Minimum air velocity 50 fpm	20 out of 20	Yes
Alert Sections, Investigate	20 out of 20	Yes
Alert/Alarm Surface, Withdraw Sections	20 out of 20	Yes
Alarm section within 4000 feet, or section mouth	20 out of 20	No
Two-way communications	20 out of 20	Yes
Alert/Alarm settings from Tables	20 out of 20	No
Maximum air quantity 202,000 cfm	20 out of 20	No
Maximum 50 percent total section intake	20 out of 20	No
Visual Examination each shift	20 out of 20	Yes
Inspection 7 days	20 out of 20	Yes
Calibration 31 days	20 out of 20	Yes
Records of Alert and Alarms, Maintenance, Calibrations	20 out of 20	Yes
Ventilation Plan Requirements	20 out of 20	Yes
Allow time delays 3 minute maximum	20 out of 20	Yes
System Failures—Monitoring and Patrolling	20 out of 20	Yes
Monitor 4 hours after power disconnect	20 out of 20	Yes
Monitor for short-circuit, open circuit	20 out of 20	Yes
Method for determining ambient specified	20 out of 20	No
Respirable Dust 1.0 mg/m^3—DA	20 out of 20	Yes
Study required—multiple entries	20 out of 20	No
Mine design requirement—protect escapeway	20 out of 20	No
Alert—Notify and Investigate	20 out of 20	Yes
Alarm—Withdraw miners	20 out of 20	Yes
Intake escapeway restrictions	20 out of 20	No
Flame-resistant belting	20 out of 20	No
Allow Point-feeding	2 out of 20	Yes
Require monitoring of point-feed	1 out of 20	Yes
Minimum Velocity 400 fpm through point-feed	1 out of 20	Yes (300 fpm)

Most requirements from the § 75.350 proposed decisions and orders allowing the use of belt air are included in this proposed rule. As discussed elsewhere in this preamble, we are not including requirements for improved conveyor belt flame resistance. This rule which was originally proposed in 1992 was recently withdrawn from MSHA's regulatory agenda. (*See* 67 FR 46431). We are not requiring alarms on the section for sensors within 4,000 feet of the section to be automatically activated. Rather, we have proposed that any sensor in alarm would automatically notify affected areas.

MSHA does not include language to require limits on the air quantity carried in the belt entry or air course. The Agency expects that any mine using more than 202,000 cubic feet per minute (cfm) will be an exception, and that modifications will be made by additional sensor installations and reduced alert and alarm levels required by the District Manager. In addition, we do not include any requirement limiting the ratio of belt air quantity to the total intake air quantity coursed to the section. We believe the requirements of the proposed rule are adequate for protecting miners. We have not included tables or nomographs developed from research to be used for determining appropriate alert and alarm levels. These tools would assist MSHA District Managers in reviewing ventilation plans for approval and determining additional requirements on a mine-by-mine basis. We feel that, for typical installations, the 5 and 10 ppm alert and alarm settings are adequate.

We also do not specify a method for determining the ambient CO concentration. Under proposed § 75.351(j) mine operators would be required to provide the Agency with AMS data or an equally effective method in setting ambient levels. The method for determining the ambient CO concentration would need to be approved in the mine ventilation plan.

Unlike the § 75.350 petitions, we are not requiring a provision to require a MSHA study in mines where more than one entry is common with the belt entry. In these mines, the District Manager may require additional sensors and reduced alert and alarm settings and we expect these requirements to be set on a mine-by-mine basis.

MSHA can involve its Technical Support branch to conduct such studies in mines where multiple entries indicate that additional safeguards may be needed. We have not included additional restrictions on the use of equipment in the intake escapeway. The Agency believes existing standards in § 75.380 (Escapeways; bituminous and lignite mines) cover these requirements.

A few belt air petitions included requirements for using belt air that are not listed in Table 3. Typically, these additional requirements were requested following negotiation between mine management and labor during the petition for modification process. Most of these requirements addressed mine-specific conditions, and therefore, are not germane to the safe use of belt air for mines with three or more entries that choose to use it. Some of these requirements are covered, in part, by either existing standards or this proposed rule. Conditions addressed in existing standards include:

—*Ambient CO levels * * * shall not be determined when diesel equipment is idling in an air split.* This petition requirement is addressed in a new diesel standard that prohibits the idling of diesel-powered equipment, 30 CFR 75.1916—Operation of diesel-powered equipment.

—*A ''Wall of Water'' fire suppression system shall be installed just inby the belt take-up/storage unit for each drive unit.* Deluge-type water sprays, foam

generators, or equivalent protection are required at all belt-conveyor drives by 30 CFR 75.1101—Deluge-type water sprays, foam generators; main and secondary belt-conveyor drives.

—Stopping construction is specified as to the type of blocks, construction method, and coating of joints. A petition *forbids use of Kennedy stoppings and hollow core block* for stopping construction. These issues are substantially covered by existing provisions in 30 CFR 75.333—Ventilation controls.

—A special belt entry maintenance program is required by a petition, and identifies the manufacturer's recommended maintenance schedule. We believe this issue is covered by existing provisions in 30 CFR 75.360—Preshift examination at fixed intervals; 75.362—On-shift examination; and 75.400—Accumulation of combustible materials.

—Equipment considered potential fire sources in the intake escapeway are required to be equipped with fire suppression systems. These are already covered by existing provisions in 30 CFR 75.1107—Fire suppression devices.

Conditions that, based on Agency experience, are adequately addressed in the proposed rule include:

—A few petitions contain very specific language on the placement of sensors. Sensors are required to be *placed as near to the roof as feasible (efforts toward monitoring within 12 inches of the roof).* We have not included the requirement to monitor within 12 inches of the roof. We consider the requirement of 'as near the roof as feasible' in the proposed rule to be sufficient.

—Patrolling of two adjacent sensors which are inoperative is required each *30 minutes.* A complete system failure requires a one-hour period. MSHA is proposing that a one-hour period for all patrolling is sufficient.

There is one condition in some of these atypical petitions that *a directional lifeline shall be installed for the duration of the return escapeway* when return entries are utilized as alternate escapeways. Even though this issue is not germane to the safe use of belt air, we are soliciting comments on the use of lifelines in this proposed rule because the Advisory Committee recommended their use (in Recommendation Number 8).

E. Preamble Summary—Belt Entry Ventilation Review

In 1989, a committee was formed of MSHA staff to review safety questions surrounding the ventilation of belt conveyors in underground coal mines. The committee was referred to as the Belt Entry Ventilation Review (BEVR) committee. A final report issued by the BEVR committee made ten recommendations. The following discusses the recommendations and subsequent actions taken by MSHA to address the recommendations including proposed provisions included in this rule.

1. Increased emphasis should be placed on belt maintenance, belt entry clean-up, and rock dusting.

Maintenance, cleanup, and rock dusting in the belt entry are important for all mines using belt haulage. However, these items are already covered by existing regulations (§ 75.362(b)—On-shift examination and § 75.400—Accumulation of combustible materials). MSHA issued a Program Information Bulletin (P89–40) in 1989 addressing inspection of belt entries to emphasize proper maintenance and clean-up. We are not proposing any additional regulation for belt entry maintenance, cleanup, or rock dusting.

2. Emphasis should be placed on proper construction and maintenance of stoppings separating intake escapeways from other intake entries.

Again, regulations exist regarding the construction of stoppings, as well as all permanent ventilation controls (§ 75.333—Ventilation controls). MSHA issued a Program Information Bulletin (P89–35) in 1989 addressing inspection of stoppings to emphasize proper stopping construction and maintenance. The Agency believes no additional regulation is needed.

3. Sections should be designed by entry location, number of entries, or pressure differential, to enhance the protection of the intake escapeway from contamination by fires in adjacent separate entries.

The Agency agrees that mine design can provide additional benefits for protecting the intake escapeway. We believe mine operators should explore possible changes to ventilation systems. MSHA and the mine operator should work together in the mine ventilation plan approval process to address these issues. However, there are factors which will limit changes to mine ventilation system design, including methane liberation, geologic considerations, and other mine specific concerns. MSHA believes proposing regulations which dictate mine design are not needed, and thus is not proposing regulations concerning mine design.

4. Intake escapeways should be maintained free of potential fire sources unless such sources are protected by fire suppression or other acceptable devices.

Regulations finalized in 1996 (§ 75.340—Underground electrical installations) require electrical installations located in intake airways to be protected by noncombustible structures, or equipped with fire suppression. Also promulgated in 1996, regulations in § 75.380—Escapeways, prohibit the use of certain equipment in the primary escapeway, and requires the use of fire suppression on most other equipment. Proposed § 75.350(b)(4) would require the monitoring of the intake escapeway by CO sensor(s) as part of the AMS, meeting all of the requirements of proposed § 75.351.

5. Directing air inby through the belt entry and to the return through a restrictive regulator or pipe overcast does not comply with section 75.326 and should be discontinued.

This practice is no longer accepted by MSHA. We released a Program Policy Letter (P89–V–18) in 1989 stating that this practice should not be permitted because it allows belt air to ventilate working places; which was prohibited by former § 75.326.

6. Training should include all drills in communication and evacuation techniques and include precautions to be taken for escape through smoke.

Existing § 75.383—Escapeway maps and drills, requires mine evacuation drills and serves as a training tool for miners. Training issues have been addressed in the proposed regulations for all miners, and is required to be included in Part 48 training programs for new miners, annual retraining, and specific training for AMS operators. Training in smoke has been conducted and is available for many groups by the National Mine Safety and Health Academy in Beaver, West Virginia. MSHA's experience and the feedback from groups participating in this training has been very positive.

While this training is available at the MSHA facility, it is not possible for all companies to train all miners in smoke, as other facilities are not readily available. We are not proposing new regulations in this area. We do expect that training plans will provide mine-specific training applicable to local conditions and concerns.

7. Belt entries used to ventilate working places should be equipped with carbon monoxide monitoring systems or smoke detectors. MSHA and the Bureau of Mines should encourage development and testing of improved smoke detectors. MSHA should initiate the development of performance standards for CO monitors and smoke detectors. MSHA should continue to stress maintenance of CO monitoring systems.

The proposed regulations require the use of an AMS to monitor the belt entry. MSHA participated in a joint program with the former Bureau of Mines and a manufacturer of smoke detectors that tested these instruments in the mine environment. MSHA is encouraging the development of new technology for fire detection and supports further research by NIOSH in this area. Rather than develop approval schedules, we have decided to require sensors to be listed by nationally recognized testing laboratories.

8. MSHA should consider requiring improvements to or replacement of point-type heat sensors.

We would require the use of an AMS as a condition to safely use belt air to ventilate the working section. This is a cornerstone of the proposed rule.

Point-type heat sensors (PTHSs) or equivalent are currently required under existing § 75.1103–4(a)(1) as part of the automatic fire sensor and warning device systems. The proposed rule will allow mine operators to use CO sensors in place of PTHSs as an equivalent method.

9. Where belt air is directed outby from the section, water lines should be relocated from the belt to a separate intake entry to facilitate fire fighting activities.

Because this is not a belt air issue, we have not included any requirement in this proposed rule.

10. Further research should be conducted to evaluate the impact of air velocities on underground fire fighting and to provide information on the growth and spread of mine fires involving materials other than conveyor belts.

Additional research was completed by the former Bureau of Mines and NIOSH in these areas subsequent to the release of the BEVR report. MSHA used much of the published results in developing this proposed rule. Additional research by NIOSH concerning fire detection is ongoing, and the Agency remains in contact with researchers on new and developing technology.

IV. Discussion of the Proposed Rule

A. General Discussion—30 CFR, Part 75, Subpart D—Ventilation

Existing § 75.350 (Air courses and belt haulage entries) requires that entries used as intake and return air courses be separated from belt haulage entries and prohibits air coursed through belt entries from ventilating working places. The proposed rule would continue to allow the existing method of ventilation where belt air is coursed to a return air course or to the surface and not onto either the working sections or equipment setup or removal areas. However, it also would permit, with additional safeguards, the use of belt air to ventilate the working sections and the setup or removal areas.

Past practice has been for a mine operator to file a petition for modification of § 75.350 (or formerly § 75.326) to seek approval to use belt air to ventilate working places in underground coal mines. To date, we have granted approximately 90 such petitions. About nine petitions are being processed as of the date of this notice. Under existing § 75.350 (Air courses and belt haulage entries), mines opened on or before March 30, 1970, may use belt air to ventilate working places when it is determined that this air is needed to provide adequate ventilation. Currently, eight mines developed before 1970 are ventilated in this manner. In each of these cases, we require the mine operator, through the mine ventilation plan, to continue to meet at least the same level of protection provided in petitions that we have granted. Therefore, the mines developed before 1970 will not be exempted from the rule but must meet the new regulations.

Our experience regarding belt air petitions has been that with proper safeguards, allowing belt air to ventilate working places (belt air) can achieve net safety benefits. Belt air usage can result in an increase in the quantity of air in the belt entry and other common entries (belt air course). This provides increased protection to miners against hazards created by elevated levels of methane, other harmful gases, and respirable dust. Significantly, this method of ventilation can help to balance pressures between air courses in the system. Present § 75.350, that is identical to the former § 75.326, requires that the mine operator ''limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries and to assure that the air therein shall contain less than 1.0 volume per centum of methane.'' In the past, mine operators regulated the air flowing through the belt air course such that most of the air flowing toward the working sections flowed in the intake air course. This action commonly caused pressure differentials to occur between the entries. Balancing the air volume in the primary intake air course with the air volume in the belt air course generally provides less pressure differential between the primary escapeway intake air course and the belt air course. Pressure-balanced ventilation systems reduce the likelihood that air will leak from the belt air course into adjoining intake air courses, including the primary escapeway. Should a fire develop in the belt entry or other common entries, the products of combustion would tend to stay in the belt air course for a longer duration. This would enhance escape through the primary escapeway by keeping the parallel primary escapeway free of smoke.

We recognize the problems created when the products of combustion from a fire are transported to the working sections. However, we believe, as did the Advisory Committee, that with proper precautions, belt air can be safely used to ventilate working places.

The Advisory Committee recommended that lifelines be installed and maintained in all escapeways. The Advisory Committee heard testimony from several members of the industry to the effect that lifelines are beneficial. However, they also heard that lifelines placed in active entries were quickly destroyed due to normal mining activities and that repair was not considered a priority. Therefore, we have not included a requirement for life lines in the proposed rule. We specifically solicit comments on the need for and the maintainability of lifelines in escapeways.

The Advisory Committee recognized the importance of protecting the ''integrity of the atmosphere'' in the primary escapeway. In addressing this issue, the Advisory Committee report states, ''The Committee believed that it is desirable, even during normal operation of the mine, to maintain the integrity of the mine atmosphere in the escapeways by providing a positive pressure differential between the escapeways and the adjacent entries.'' We agree with the concept that separation of the belt air course from the primary escapeway is essential in providing miners a safe route to the surface. One method to help accomplish this would be to maintain the primary escapeway at a pressure that is higher than the adjacent entries. However, the Advisory Committee recognized that, sometimes, it may be difficult to always maintain the pressure differential in the proper direction. Because of the difficulty of maintaining the primary escapeway at a higher pressure than an adjacent air course, the Agency has decided not to propose this requirement. However, we recommend that MSHA and the mine operator should work together during the mine ventilation plan approval process to address this issue on a mine-by-mine basis.

The Advisory Committee recommended that we proceed to

develop regulations for improved fire-resistant belting including new testing and approval schedules. These issues were placed in a separate rulemaking and are not included in this rulemaking package as discussed above.

Existing § 75.351 (Atmospheric monitoring system (AMS) established performance requirements for AMSs used to comply with existing §§ 75.323 (d)(1)(ii)—Return air split alternative, 75.340(a)(1)(ii) and 75.340(a)(2)(ii)—Underground electrical installations, or 75.362(f)—On-shift examination. The proposed rule would revise § 75.351 to include requirements for the installation and operation of an AMS in belt entries. The Advisory Committee concluded that belt air course could be safely used to ventilate working places of underground coal mines, provided additional safety and health conditions are met. One additional condition is the presence within the belt entry of an early-warning fire detection system. This position is consistent with the conclusion of the BEVR Committee that ''Directing belt air to the face provides protection equivalent to other ventilation methods which comply with § 75.326 [now § 75.350], provided a carbon monoxide (CO) or other improved monitoring system is used.'' It is also consistent with our position since 1978 requiring the use of a low-level CO detection system when we grant a petition to use belt air to ventilate working places.

B. Section-by-Section Discussion

Part 75—Mandatory Safety Standards—Underground Coal Mines

Section 75.301 Definitions.

This proposed rule would add six new definitions to the list of definitions contained in the existing standard. As with other definitions in this section, the new definitions would only apply to subpart D—Ventilation.

The proposed rule would define *appropriate personnel* as the person or persons designated by the operator to perform specific tasks in response to AMS signals under § 75.351.

The proposed rule would define an *atmospheric monitoring system (AMS)* as a network consisting of hardware and software capable of measuring atmospheric parameters, such as carbon monoxide and methane concentrations, and smoke optical density; transmitting the measurements to a designated surface location; providing alert and alarm signals to designated locations; processing and cataloging atmospheric data; and providing reports that can be used in the maintenance and calibration of the system by the mine operator. We believe that each of these capabilities is important and that an AMS used to comply with the requirements of the standard provides these functions.

The proposed rule would define the *AMS operator* as the person(s) designated by the mine operator and located on the surface of the mine to monitor the AMS signals and to notify appropriate personnel in response to a malfunction, alert, or alarm signal. The Advisory Committee recommended that this person also be responsible for initiating procedures contained in the mine's fire fighting and evacuation plan. During discussions of the duties of the ''responsible person,'' the Advisory Committee characterized this person as ''responsible for monitoring the system and, hence, initiating the Fire Fighting and Evacuation Plan.'' Some members of the Advisory Committee noted that this individual was responsible for the safety of the miners in the mine. Other members of the Advisory Committee, as well as testimony by some members of the public, argued that the responsibility for the safety of the miners rests elsewhere and not solely with the person monitoring the AMS on the surface. We believe that, although the AMS operator could be the person designated to initiate the actions of the approved program of instruction (*i.e.*, the mine emergency evacuation and firefighting plan), this rule should not require that person to be the person in charge of implementing the approved program of instruction. Instead, the individual responsible for initiating actions specified in the fire fighting and evacuation plan should be identified in the approved program of instruction (§ 75.1502).

MSHA includes a definition for the *belt air course* in the proposed rule. The belt air course would be defined as containing the entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt air course, terminating at a return regulator, a working section, or the surface. The proposed rule deals with the belt air course and not just the belt entry due to the homogeneity of the airstream within the air course.

The proposed rule would define *carbon monoxide ambient level* as the average concentration in ppm of CO detected in an air course containing CO sensors. This average is representative of the composition of the mine atmosphere over a designated period of mining activity during a non-fire condition. We believe that an effective early-warning fire detection system must be based upon reasonable operating parameters, which include the evaluation of ambient CO levels.

The definition of ambient level includes the term 'average concentration.' The ambient CO levels will vary from mine to mine. For this reason, the ambient level and the method used to determine it, are required to be approved in the mine ventilation plan. Documentation must be provided to the district manager that the specified ambient level requested reflects the true conditions of the atmosphere. For many mines, the average concentration will be the same throughout the air course and will be at or near zero ppm. A mine may choose to designate its ambient level as zero ppm though the average concentration might be above zero ppm. There may be more than one ambient level per mine. We recognize that in some mines, CO occurs naturally as a characteristic of the coal seam and that higher average concentrations will exist. Also, diesel-powered equipment produces CO when operating and thus will raise the average concentration of the CO within the air course. Operation of diesel-powered equipment near a CO sensor might cause 'spike' concentrations of CO to occur. In-mine tests have shown that these spikes account for a small part of the sample concentrations. Thus, if the ambient level is determined using a reasonable duration of time, the average will represent the concentration approximating that most often found in the air course.

In order for an AMS with CO sensors to be effective as an early-warning fire detection system, the ambient level must represent conditions over a broad range of mining activities. We recognize that the ambient level may vary from shift to shift depending on the type or amount of work being done. We believe approval of the ambient level and the method used to establish it are most appropriately addressed in the mine ventilation plan due to varying mining conditions and activities. Therefore, MSHA would continue to require that the ambient level and the method for determining the ambient level be specified and approved in the mine ventilation plan, § 75.371(hh).

For clarity, we are proposing a definition for *point feeding.* As defined by the proposed rule, point feeding would be the process of providing additional intake air to the belt air course from another intake air course through a regulator. It is our experience that point feeding from one intake air course to another is an effective tool for controlling the proper pressure differentials between entries. This is a useful tool that limits leakage from one

air course to other air courses. Sometimes providing additional air to the belt air course to increase air velocity in the belt entry is necessary to maintain the needed air velocity to assure that the contaminants reach the sensors. Although we acknowledge that point-feeding may be necessary, we think that the number of point-feed regulators should be kept to a minimum to maintain the integrity of the primary escapeway. Because the point-feed regulator is a permanent ventilation control, the point-feed regulator must be constructed according to the requirements of existing § 75.333(e)(1) (Ventilation controls) which states the method and material requirements for the construction of permanent stoppings and regulators.

Section 75.350—Belt Air Course Ventilation

This proposed rule would revise existing § 75.350 that prohibits air coursed through belt entries from ventilating working places. As used in the existing standard, the term 'belt entries' refers to the belt air course. Under the proposed rule, the belt air course could be used to ventilate working sections, if the mine operator meets specified safety precautions. The term 'working sections,' and not 'working places,' is used in the proposed rule to include the area inby the loading point. Existing § 75.380(g) requires separation of the primary escapeway from the belt entry beginning at the working section to the escape facilities or the surface. Thus, if the mine operator wishes to course belt air inby the end of the separation of the primary escapeway from the belt, the safety precautions of this proposed rule would apply.

The proposed rule also would permit belt air to be used to ventilate equipment setup or removal areas if the mine operator meets the same specified safety precautions. If intake air passes through a belt entry where the belt is not operating, and is coursed onto a setup or removal area, the specified precautions would not apply. For example, during longwall setup, stoppings are removed to access the belt entry at certain locations. If the belt cannot be operated, the specified precautions are not required. However, if any of the air that passes through the belt entry has passed over a belt that is being operated or has been operated within the previous four hours, the specified requirements would apply.

Separation of the belt entry from the primary escapeway entry is required by existing § 75.380(g). Under the current regulations, the belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses. Section 75.350(a) of the proposed rule would require separation of the belt air course from return air courses and other intake air courses with permanent stoppings. It requires that the belt air course cannot be used as a return air course. It also requires that belt air cannot be used to ventilate the working sections or setup or removal areas except as specified in proposed § 75.350(b). When the mine operator meets the conditions specified in § 75.350(b), separation of the belt air course from intake air courses, other than primary escapeways, would not be required.

Since existing § 75.321 requires that the oxygen level in areas where persons work or travel be no less than 19.5 percent, we have not included a minimum oxygen requirement in this section. Also, existing § 75.323(b) limits the methane in intake air courses, including belt air courses, to 1.0 percent, so we have not included this requirement in proposed § 75.350.

Existing § 75.350 requires that the air velocity in the belt entries be limited to the amount necessary to provide an adequate supply of oxygen in these entries and to assure that the air contains less than 1.0 percent methane. We have not included in the proposed rule the provision in existing § 75.350 that limits the air velocity in the belt entry. The intent of this restriction was to reduce fanning and propagation of flames in the event of a fire. Donald Mitchell, a mine fire expert, commented in written testimony to the Advisory Committee that limiting the velocity in the belt entry actually does not produce the intended results. Research has shown that higher velocities have a cooling effect on developing fires, and higher quantities reduce concentrations of volatile gases. In effect, the restriction of velocity creates additional potential hazards of smoke rollback, methane and hydrogen layering, and development of fuel-rich fires. We agree with Mr. Mitchell's conclusions and have not retained the requirement limiting the velocity in the proposal.

For mines using an AMS with CO sensors for fire detection in the belt entry, proposed § 75.351(e)(3) would require a minimum velocity of 50 feet per minute (fpm) in the belt entry unless the spacing is reduced to 350 feet between CO sensors, in which case, the velocity can be lower. Our experience shows that for an AMS with CO sensors to function properly as an early-warning fire detection system, the products of combustion must be transported to the sensors. This method of transport is the ventilation air current. The Advisory Committee concluded that a minimum air velocity of 50 fpm is necessary to ensure timely transport of combustion products to sensors. However, more recent research conducted by the National Institute of Occupational Safety and Health (NIOSH) indicates lower velocities can be used if sensor spacing is reduced. In zero-flow conditions, NIOSH has found sensor spacing of 105 meters (344 feet) to be effective for early-warning fire detection (Edwards *et al.* 1997). We recognize that mines will have some air flow within the belt entries. Therefore, we are requiring that maximum sensor spacing be reduced to 350 feet in areas where less than 50 fpm is maintained to provide adequate fire protection capabilities.

Proposed paragraph § 75.350(b) addresses the safety requirements that would apply when belt air is used to ventilate a working section or a setup or removal area. Proposed paragraph (b)(1) would require that the mine operator equip the belt entry with an AMS installed, operated, examined, and maintained as specified in proposed § 75.351. The Advisory Committee concluded that if installed, calibrated, and maintained properly, an AMS with CO and/or smoke sensors can perform satisfactorily. This conclusion is consistent with our experience with AMSs.

Proposed paragraph (b)(2) of the proposed rule would require the training of all miners annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training may be conducted as part of a miner's part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), annual refresher training (§ 48.8), or training conducted as part of the approved program of instruction, § 75.1502. The training should include the purpose of the system, the type of information that it provides, and what responses are necessary to specific signals from the AMS. We are aware that the effectiveness of any hazard warning system depends not only on the reliability of the system but also on the trust that the miners have in the system. A system that continually provides alarms when no hazard is present is of little value. The Advisory Committee concluded that if miners do not understand how the AMS works or do not trust the signals produced, the effectiveness of the AMS is reduced. Consequently, the Advisory Committee recommended, and we are proposing, that miners must be trained in how to respond to AMS signals when an AMS

is installed in mines that use belt air to ventilate working sections or setup or removal areas.

Proposed paragraph (b)(3) would require that the concentration of respirable dust in the belt air course must be maintained at or below 1.0 mg/m³ because it is now considered intake air. A permanent designated area (DA) for dust measurements would be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. We would require that this DA be specified and approved in the mine ventilation plan. The Advisory Committee recommended the establishment of DAs at appropriate locations. Establishing a DA near the loading point or before the mixing point would address the concerns of Advisory Committee members for protecting the health of persons when belt air is coursed onto the working section or setup or removal areas. The existing regulation, § 70.100(b), specifies that the average concentration of respirable dust in the intake airways within 200 feet of the working faces of each section be continuously maintained at or below 1.0 mg/m³.

Proposed § 75.350(b)(4) would require monitoring of the primary escapeway per proposed § 75.351(f) for CO or smoke within 500 feet of the working section or set up or removal areas, and within 500 feet of the beginning of the panel. In mines that point-feed from the primary escapeway near the beginning of a panel, the sensor required under § 75.351(f) must be located in the primary escapeway within 500 feet of the working section and within 500 feet of the beginning of the panel. The point-feed sensor required by proposed § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet of the beginning of the panel. Alarms activated by these sensors would warn miners of a problem in the primary escapeway upwind of the working section or setup or removal area. These sensors will provide significant additional protection for a minimal cost.

Proposed § 75.350(b)(5) is included to limit the use of belt air to sections developed using at least three entries for development. This will require all existing two-entry petition requirements to remain in effect, and these petitions will not be superceded by this rule since many of the granted petition requirements exceed those in this proposed rule. Future two-entry mines will need to continue to file petitions to use belt air, since proposed § 75.350(a) prohibits placing the conveyor belt in the return. The Agency believes the two-entry mining system provides a unique set of issues and needs to be approved on a mine-by-mine basis.

Proposed paragraph (c) would require that when a mine needs additional air in the belt air course, notwithstanding the provisions of § 75.380(g), point feeding air from any intake air course may be permitted if approved in the mine ventilation plan under § 75.370 and conditions set out in proposed paragraph (c) are met. MSHA believes that a point-feed regulator should only be used when needed and the number of point-feed regulators should be kept to a minimum. Point feeding is not meant to compensate for a poorly designed or inadequately maintained ventilation system. Although the Advisory Committee limited discussion to point feeding from the primary escapeway, we believe that any intake air course could be considered as a source for point feeding. The same requirements should apply to these other intake air courses in order to maintain the integrity of the air courses and to facilitate early-warning fire detection capability.

When point-feed regulators are used and the air in the belt air course is being used to ventilate either a working section or an area where mechanized mining equipment is being installed or removed the following conditions must be met to assure the safety of the miners.

Proposed paragraph (c)(1) would require monitoring of the air current that will pass through the point-feed regulator for CO or smoke at a point within 50 feet upwind of the point-feed regulator. Proposed paragraph (c)(2) would require monitoring of the belt air for CO or smoke at a point within 50 feet upwind of the mixing point with air from the point-feed regulator. If the sensor in the intake air stream gives an alert or alarm signal, the fire in all likelihood will be in the intake air course upwind of the point-feed regulator. If the sensor in the belt entry gives the alert or alarm signal, the source of the contaminants is most likely in the belt entry upwind of the mixing point. With this knowledge, the operator can take whatever action is appropriate to evacuate miners from the affected area safely and begin firefighting efforts.

Proper installation and maintenance of point-feed regulators, when used, are critical since they are a major component of a ventilation system. Since point-feed regulators control the flow of air between two intake air courses, the provisions of § 75.333(e)(1) (Ventilation controls) apply. Proposed paragraph (c)(3) would require that the point-feed regulator be provided with a means for remote closing without requiring persons to enter the air stream passing through the point-feed regulator. This would provide protection for those persons who may be required to close the point-feed regulator in case of an emergency. Remote closure is especially important if a fire starts in the intake air course upwind from the point-feed regulator. When the point-feed regulator is installed in the manner proposed, the person closing the point-feed regulator could approach upwind in the belt air course. This would enable the person to close the regulator without being exposed to the products of combustion coming through the point-feed regulator. By closing the point-feed regulator under these conditions, the amount of contaminants entering the belt air course could be limited, thus permitting miners to escape.

Proposed paragraph (c)(4) would require that a 300-fpm minimum air velocity be maintained through the point-feed regulator to prevent air reversals and reduce the potential for smoke rollback. The Advisory Committee considered the need to provide sufficient air quantity in the belt air course and recognized that sometimes supplying this air from the primary escapeway through a point-feed regulator may be necessary. The Advisory Committee determined that controlled point feeding is superior to ventilation of the belt air course through leakage. When point feeding is necessary, the Advisory Committee determined that point feeding from the primary escapeway into the belt air course be done under controlled conditions. In its discussion of point feeding, the Advisory Committee states, and we agree, that ''* * * while point feeding from the primary escapeway may be appropriate, point feeding into the primary escapeway from any other air course is never appropriate.'' However, we do not intend this position to change the requirement of existing § 75.380(h) which permits ventilation of the primary and alternate escapeways from a common intake air shaft or slope.

Proposed paragraph (c)(5) would require the operator to submit a mine ventilation plan that includes the location of all point-feed regulators. The installation of the point-feed regulator must comply with existing § 75.333 and must meet the performance requirement of remote closure.

In addition, proposed paragraph (c)(5) would require that the locations of

point-feed regulators must be shown on the mine ventilation map required by § 75.372 (Mine ventilation map). An accurate and complete map enables both the operator and MSHA to evaluate the ventilation system. It would also require that the operator show the locations of point-feed regulators on the escapeway map required by existing § 75.383. During escape, it is important that miners be aware of all aspects of the ventilation system that might affect their ability to exit the mine safely. Although a means for closure is required for all point-feed regulators, closing a regulator, as in making any air change during a fire, should be done only when a demonstrated need exists.

Proposed paragraph (c)(6) would require an AMS to be installed, operated, examined, and maintained as specified in proposed § 75.351 when point-feed regulators are used. This requirement would greatly increase protection for miners by increasing the level of atmospheric monitoring of areas where intake air crosses into a belt air course, thereby increasing the ability of the system to detect hazards before they can develop into serious threats.

Section 75.351 Atmospheric Monitoring Systems

This proposed standard sets out the installation, location, examination, maintenance, and operational requirements for AMSs. The Advisory Committee concluded that air in the belt air course could be safely used to ventilate working places if the mine operator meets certain conditions. The primary condition is the use within the belt entry of ''* * * a reliable and properly specified, installed, calibrated, and maintained Atmospheric Monitoring System * * *'' [Advisory Committee report, Page i]. The proposed standard sets out the requirements implementing that part of the Advisory Committee recommendation concerning the installation, calibration, and maintenance of the AMS to assure its reliability. The proper operation of an AMS is the keystone around which the safe use of belt air, and other provisions in this proposed rule, is based. We believe that current AMS technology is reliable. Since 1975, the year when an AMS was first required as a condition for the granting of a belt air petition, we have included performance criteria for an AMS as part of each petition granted. As AMS technology has evolved, the performance requirements in the granted petitions have also evolved. Performance requirements are included in this proposed standard.

Proposed paragraph (a) would require proper AMS operation. Whenever personnel are underground and an AMS is used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where signals from the AMS can be seen or heard and the operator can promptly respond to these signals.

Proposed § 75.351(a) would require that an AMS installed in accordance with §§ 75.350(b) or 75.350(c) monitor the mine atmosphere at all times that a belt air course is used to provide intake air to a working section or an area where mechanized mining equipment is being installed or removed and miners are underground. In general, this requirement is independent of belt operation or coal production on affected sections. An exception to §§ 75.350(b) or 75.350(c) would be when the belts are not operated and coal is not produced after a period exceeding 24 hours. Activities included in this exception are a production shut-down to complete non-production work (dead work) for several days or temporary mine closures due to market conditions, vacations, *etc.* However, it is recognized that normally it would be an advantage to the operator to keep the AMS operating at all times.

Our experience is that many fires in belt entries start after the belt is stopped. As discussed previously, a review of the reports of reportable belt entry fires confirms this. The 24-hour period is included in the proposed rule to address these concerns after a belt shut-down and to address extended idle periods when the likelihood of a belt fire diminishes. The four-hour period that is found in most current petitions for modification is being replaced with this more stringent requirement that the belt be monitored for 24 hours after the belt is shut down. This requirement is not intended to superceded the requirements in § 75.1103–4(e). The AMS must be operating and in compliance with §§ 75.350(b) and 75.350(c) one hour prior to restarting the belt.

This approach is consistent with the belt air petitions and the recommendations of the Advisory Committee. The proposed requirement is similar to existing § 75.351(d)(1), which requires a person designated by the operator be at the surface location while anyone is underground. This proposed requirement clarifies when the AMS must be operable and when the AMS operator must be at the designated surface location.

Proposed § 75.351(b) would require the operator to designate a surface location at the mine for receiving signals from the AMS sensors or at another location approved by the district manager, and provide an AMS operator to respond to those signals when the system is used to comply with existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii) or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination), and proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). This would allow the district manager to address situations where there are multiple mines in close proximity in one area to share one designated surface location that would provide the same degree of effective monitoring and early-warning protection.

As with the existing standard, under paragraph 75.351(b)(1) of the proposed rule, the responsible person would have access to two-way voice communication with persons at working sections, at setup or removal areas, and at other areas included in the approved program of instruction, § 75.1502. These areas would be equipped with two-way communication in accordance with existing § 75.310(a)(3). These other areas may include belt drives, belt transfer points, underground dumps, and underground shops. We do not intend it to mean areas where persons are assigned to work on a temporary basis, such as areas where miners are installing auxiliary supports or where they are making repairs to track haulage systems.

Proposed paragraph (b)(2) would require the operator to designate an AMS operator to monitor the AMS output and be at a location on the mine surface where all AMS signals can be responded to promptly. Proposed paragraph (b)(3) would require the posting at the surface location of an up-to-date map or schematic showing air flow directions and the location and type of all AMS sensors. The map or schematic could be displayed or stored in the AMS computer and retrieved when needed. By posting an up-to-date map showing the locations and types of AMS sensors and the intended air flow direction, the responsible person will be better able to identify the affected areas of the mine. The proposed requirement is similar to the requirement in existing § 75.351(d)(1) requiring the posting of a mine map showing the underground monitoring system at a surface location. We would require the AMS operator to notify appropriate personnel in response to a malfunction, alert, or alarm signal. The AMS operator could be the person initiating the approved program of instruction or could notify the responsible official for initiating the

plan. Mine operators are encouraged to send information from the AMS to alternate locations, either on or off mine property, so long as the original signal goes to the designated surface location. The AMS operator, designated by the mine operator, must be on duty while anyone else is underground and the monitoring requirements of existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii), or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination) apply. This proposed requirement also would apply to proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). Proposed § 75.351(b)(3) is also consistent with our long held position as reflected in petitions requiring the use of an AMS.

Proposed § 75.351(b)(4) would require that the names of the designated AMS operators; appropriate personnel, such as section foreman, maintenance foreman, mine manager, and safety director; the responsible person referred to in proposed § 75.352, and the method to contact these persons must be provided at the designated surface location. This will provide a means for any person to promptly contact the appropriate personnel in the event of an emergency.

Proposed paragraph (c) would establish minimum operational requirements for an AMS installed in accordance with existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii), or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination). Proposed paragraph (c) also would apply to proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). As recommended by the Advisory Committee, proposed paragraph (c)(1) would require that the AMS monitor and provide a signal at the designated surface location for any interruption of circuit continuity or any electrical malfunction of the system. Proposed paragraph (c)(1) would require the system to identify, at the designated surface location, the operating status of all sensors. As discussed previously, when an AMS is used, it is an integral part of the overall safety program for the mine. It is important that the AMS operator be aware of the status of the system. Without this knowledge, the AMS operator cannot appropriately respond to alert and alarm signals from the system. As such, it is imperative that it is in proper operating condition or that the operator know when it is not operating properly so that remedial measures can be started. By having a self-monitoring system, this information is more readily available and the operator can notify appropriate personnel.

Proposed paragraph (c)(2) would require that the AMS automatically provide an alert signal at the designated surface location that is distinguishable from an alarm signal, when the CO or methane concentration reaches the established alert level. The proposed rule requires that the AMS operator notify responsible persons. It is essential that this individual is immediately aware of the existence of an alert condition.

MSHA has developed a tiered response approach to address malfunction, alert, and alarm signals in order to require appropriate reaction by the AMS operator and miners. Malfunction and alert signals are addressed in a similar manner in this proposed rule. It is important to determine the cause of either the malfunction or alert signal and to correct it as soon as possible. The AMS operator must be able to tell, by sight or sound, if a signal is the result of a malfunction, alert, or alarm in order to respond correctly to the situation. Signals can be modified by assigning different tones or lights to the different signals so that the AMS operator can easily distinguish them in order to appropriately respond. Alarms on sections must be discernable by sight or sound by the miners so that appropriate actions outlined in the approved program of instruction can be started (§ 75.1502).

MSHA proposes paragraph (c)(3) to require signals that can be seen and heard by the AMS operator at the designated surface location when the CO, smoke, or methane concentration at any sensor reaches the alarm level as activated automatically at the designated surface location. This is consistent with the recommendation of the Advisory Committee. This proposed provision would require giving a visual and audible signal for any alarm condition, including CO, smoke, and methane. It also would trigger initiation of the actions specified in §§ 75.352(a)(2) and 75.352(a)(3).

By requiring notification at the surface location and underground, the proposed rule provides a degree of redundancy that will increase the likelihood of notification and speed up response to the alarm. MSHA has included this requirement in recent approved belt air petitions for modification and it has been successful in increasing the response to alarm signals.

In addition, proposed paragraph (c)(4) would require that the alarms be given at all affected working sections and areas where miners can see and hear the signals. The intent of this requirement is to assure that the AMS provides the required signals notifying miners of hazards. The Advisory Committee heard considerable testimony about problems associated with notifying persons on affected working sections during the Marianna mine fire. Consequently, the Advisory Committee recommended, and this proposed rule would require in paragraph (c)(4), that alarms be given at locations where they can be seen and heard by affected miners.

Proposed paragraph (c)(4) would also require that when methane alerts (1.0 %) and alarms (1.5%) are used that these signals be distinguishable from all other alert and alarm signals. Because elevated levels of methane may pose a significant explosion hazard, it is essential that miners are immediately aware that the alarm being given is the result of an elevated methane concentration.

Proposed paragraph (c)(5) would require that the AMS automatically provide an alarm signal that can be seen and heard by miners in other locations, such as underground shops and track maintenance locations, as specified in the approved program of instruction (§ 75.1502). Proposed paragraph (c)(6) would require that the AMS identify the operational status of all sensors at the designated surface location.

Proposed paragraph (d) would specify the location and installation requirements for AMS sensors. Proposed paragraph (d)(1) would require that AMS sensors be in the airstream they are intended to monitor to assure measurements are representative of the entry atmosphere. This provision ensures the positioning of sensors to detect a hazardous condition should it develop. For example, where an electrical installation is monitored to comply with §§ 75.340(a)(1)(ii) or 75.340(a)(2)(ii), the sensor should be positioned downwind in the airstream used to ventilate that installation. This is to provide the maximum potential for fire detection, since the products of combustion are going to follow the air current.

Proposed § 75.351(d)(2) would require installation of CO or smoke sensors near the center of the entry as near the roof as feasible in a location that would not expose personnel working on the system to unsafe conditions. This requirement is necessary to make certain that sensors are placed away from machinery, such as the conveyor belt itself, that could be a hazard to miners working on the AMS.

Proposed § 75.351(d)(2) specifies that operators not install sensors in abnormally high areas or in other locations where air flow patterns do not permit products of combustion to reach the sensors. This proposed requirement was developed based on work conducted by the former U.S. Bureau of Mines (USBM) and Agency experience with existing belt air petitions. This work has shown that during both smoldering and open combustion fires, the products of combustion stratify. The highest concentrations are found near the mine roof. Accordingly, the former USBM recommended installing sensors near the roof of the entry to take advantage of this stratification. Our experience shows that when operators do not properly position sensors, heatings or fires can go undetected or their detection can be delayed. For example, sensors that are positioned behind posts or equipment will not be exposed to the products of combustion contained in the air stream.

Proposed paragraph (d)(3) requires that methane sensors be installed near the center of the entry at least 12 inches from the roof, ribs, and floor. Existing § 75.351(b)(2) failed to specify the location of the sensor in relation to the roof, ribs, or floor. This proposed paragraph adds this requirement paralleling the requirement of § 75.323(a) for conducting methane tests. Section 75.323(d)(1)(ii) requires the use of an AMS when using the return air split alternative. The proposed rule also requires installation of methane sensors near the center of the entry in a location that would not expose personnel working on the system to unsafe conditions.

Proposed paragraph (e) specifies the locations along the belt entry where the operator must install sensors to monitor for CO or smoke. Paragraph (e)(1) requires a sensor at or near the working section tailpiece. This sensor is to monitor the belt and it is not intended to monitor the section tailpiece or feeder. The tailpiece area is visited frequently and a sensor hung over the loading point would be subject to being damaged. The sensor must be installed in the air stream ventilating the belt entry. In longwall mining systems using belt air to ventilate the working section, proposed paragraph (e)(1) requires that the sensor near the tailpiece be located in the belt entry at a distance of no more than 150 feet upwind from the mixing point where intake air is mixed with belt air at or near the tailpiece. This requirement would monitor the belt up to the point that intake air flows into the belt entry mixing with belt air. It is not intended to monitor the stage loader since the tailpiece is often attended by miners, therefore, miners would be in the area and aware of any sign of a fire.

Proposed paragraph (e)(2) requires that a sensor be located immediately upwind, a distance of no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses. This would require placing a CO or smoke sensor in the belt entry (*i.e.,* main belt entry) just before the air stream splits to ventilate another belt entry (*e.g.,* a panel belt). Also, if two belt air splits join, this paragraph would require a sensor in each air split immediately prior to joining. These sensors are required to promptly identify the location of a fire in either air split and would more precisely show the location or air split where the fire originated.

Proposed paragraph (e)(3) would require sensors to be installed at intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. The 1,000-foot spacing is consistent with the Advisory Committee recommendation, Agency experience under the petition process, and research conducted by NIOSH and the former U.S. Bureau of Mines. Also, in areas where air velocities are maintained at less than 50 fpm, the sensor spacing must not exceed 350 feet. In areas where the air velocity in the belt entry is maintained at less than 50 fpm, the sensor spacing must be reduced to 350 feet.

Proposed paragraph (e)(4) requires a sensor be placed not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. If the belt drive, tailpiece, and/or take-up are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component. This requirement is consistent with current petitions. It is intended to monitor the drive area, a potential fire source because of dust accumulations and electrical equipment.

Proposed paragraph (e)(5) would allow the district manager to require additional sensors as mine conditions warrant. As belt drive configurations often require altering the belt entry, additional sensors may be required in this area. Also, other areas may require additional monitoring due to unusual entry shape or air flow patterns. The location of additional sensors must be specified in the mine ventilation plan. The Advisory Committee recommended the installation of a CO sensor at the inby end of the section track if the belt and track are in separate entries of the same air course. However, we are proposing to allow the district manager flexibility in determining the appropriate location for placement of the sensors. Paragraph (e)(5) would allow the district manager to require additional sensors in any entry that is part of the belt air course.

Paragraph (f) specifies the location of sensors in the primary escapeway. If used to monitor the primary escapeway under § 75.350(b)(4), CO or smoke sensors would be located in the primary escapeway within 500 feet of the working section and within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel. Under this situation, only one sensor would be required to comply with both of the requirements.

Paragraph (g) specifies the location of sensors in return air splits. Proposed §§ 75.351(g)(1) and 75.351(g)(2) retain the requirements in existing §§ 75.351 (b)(1) and 75.351(b)(2) for monitoring return air splits using an AMS. Monitoring in returns where auxiliary fans are used is addressed in proposed § 75.351(g)(2). Proposed paragraph (g)(2) would require an AMS to monitor the mine atmosphere for percentage of methane at two locations. Proposed § 75.351(g)(2)(i) states that in the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) and tubing are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point. Proposed § 75.351(g)(2)(ii) would require that the mine atmosphere be monitored immediately upwind from the location where the split of air meets another split of air or immediately upwind of the location where the split of air is used to ventilate seals or worked-out areas. Placing methane sensors at these locations monitors the methane concentration near the beginning and the end of the immediate return. The AMS must provide an alarm when either sensor reaches 1.5 percent methane. This is the concentration specified in proposed § 75.351(i)(1) that corresponds to the methane action level specified in the existing § 75.323(d)(2) and provides adequate monitoring of the return.

Proposed § 75.351(h) retains the requirement of existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii). Existing § 75.351(c) addresses AMS monitoring of underground electrical

installations for the products of combustion. Under existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii), mine operators may choose to monitor transformer stations, battery charging stations, substations, rectifiers, and water pumps for CO or smoke instead of coursing the intake air ventilating the structure or area housing these installations into a return air course. Under this alternative, existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii) require at least one CO or smoke sensor to monitor the intake air ventilating the installation. The sensor must be located no greater than 50 feet downwind from the installation.

Paragraph (i) of the proposed rule establishes and standardizes specific alert and alarm settings for any AMS used in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f). The alert and alarm levels proposed are consistent with decision and orders issued by the Administration in recent petitions submitted by mine operators requesting a modification of the standard.

Proposed paragraph (i)(1) would require that when an AMS is used to monitor methane concentrations in return air splits to comply with § 75.323(d)(1)(ii), it gives an alarm when the methane reaches 1.5 percent and the actions specified in § 75.323(d)(2) must be taken. An alert level is not specified for methane sensors monitoring immediate return splits for § 75.323(d)(1)(ii). The return air split alternative provisions under § 75.323(d) only require action when the methane concentration is 1.5 percent or higher. Therefore, no alert is specified. The alarm would be given at the working section so personnel can start the actions required by existing § 75.323(d)(2).

Existing § 75.340(a) requires the ventilation of specified electrical installations with intake air and permits options allowing ventilation with intake air coursed into a return air course or to the surface and not used to ventilate working sections, or using intake air where an AMS is in operation. Some options require monitoring the air for CO or smoke. Proposed paragraph (i)(2) would require that when CO sensors are used to comply with existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii), and proposed §§ 75.350(b) and 75.350(c), they provide an alert signal at 5 ppm above the ambient level and alarm at 10 ppm above ambient CO level. The proposed requirement is the same as that currently required in existing § 75.351(a)(3)(i) for alert signals and § 75.351(a)(4) for alarms and is also consistent with recent requirements in granted petitions for modification. MSHA's past experience with petitions for modifications indicates that this requirement is protective of miner safety.

Proposed paragraph (i)(2) would also require that an AMS with smoke sensors alarm at a smoke optical density of 0.022 per meter. This is the same smoke optical density requirement in existing § 75.340(a)(1)(iii)(b) for smoke sensors monitoring noncombustible areas used to house electrical installations. However, the requirement for smoke sensors to provide an alarm at a smoke optical density of 0.022 per meter is a lower alarm threshold than the existing threshold of 0.05 per meter in existing § 75.351(a)(4). We explained this difference in the preamble to the final rule on safety standards for underground coal mine ventilation (61 FR 9764, 9786–87, March 11, 1996). We reprint the text of this explanation here for the convenience of the reader.

In § 75.340 (a)(1)(iii)(B) of the proposal and the preamble discussion on page 26371 [of Volume 59 of the **Federal Register**, May 19, 1994], MSHA refers to the optical density of smoke of 0.05 per meter to characterize the sensitivity of smoke detectors. As discussed in MSHA's opening statement to the ventilation rulemaking hearings, the value used for the optical density of smoke is based on information provided from the former USBM. MSHA pointed out that based on comments received from the former USBM, this number is incorrect and should be divided by 2.303 to conform to the internationally accepted term of optical density. No commenter took issue with this point. MSHA has made the correction in the final rule. One commenter suggested that optical densities be increased and based on an ambient to account for background dust. In contrast, another commenter suggested that the specified optical density should be reduced by half. MSHA has found insufficient justification to adopt either of these suggestions and believes that the specified 0.05, corrected to 0.022 based on comments from the former USBM, is the appropriate level for optical density used in § 75.340. Existing § 75.351 Atmospheric monitoring system (AMS), uses a level for optical density of smoke of 0.05 per meter. MSHA recognizes that the level in § 75.351 should also be corrected. MSHA intends to correct the level for optical density used in § 75.351 in a future rulemaking. In the meantime, MSHA will use an optical density of 0.022 per meter for purposes of § 75.340. This rulemaking therefore proposes to lower the optical density to the proper level of 0.022 per meter when fire detection relies on smoke sensors.

For proposed § 75.351, we have standardized the alert and alarm levels from those required by some petitions to provide a more practical approach to setting alert and alarm levels. Proposed paragraph (i)(2) would require an alert signal at 5 ppm and alarm at 10 ppm CO above the ambient level based on former BOM research, Agency experience with petitions, and the Advisory Committee recommendation. These proposed levels will provide early-warning capability. The Advisory Committee recommended that alert and alarm levels for mines using belt air to ventilate a working place ''should not exceed 5 ppm and 10 ppm above ambient, respectively.'' When smoke sensors are used, the alarm would be provided at a smoke optical density of 0.022 per meter.

The Advisory Committee also recommended that the ''District Manager may establish lower alert and alarm levels for AMS based on the sensor type and sensitivity, sensor spacing, air flow, cross-sectional area, and local mining conditions.'' Proposed paragraph (i)(2) follows this recommendation by the Advisory Committee providing the flexibility to lower alert and alarm levels for a high air volume in the belt air course. Levels below 5 ppm and 10 ppm may be necessary when large air quantities dilute the CO in the air course. Some fire detection research set alert and alarm levels based upon air velocity, cross-sectional area, and CO generation rates from smoldering and burning fuel sources. This research was presented as nomographs used to set CO sensor settings for different sensor spacings using air velocity and entry area parameters. Tables were derived in an attempt to simplify the application of research data because the nomographs were difficult to use. Because of overlap in the tables, conflicting determinations for alert and alarm settings occurred. Though the tables provided a simpler method for reducing alert and alarm settings based on increased air flow quantities and cross-sectional areas, they have not always been easy to use because of variations in entry configuration and air velocity in an air course. MSHA believes the ventilation plan offers the best tool to handle special circumstances, such as when lower alert and alarm levels are needed due to increased air volume. We solicit comments on this simplified approach.

During the discussion on the Advisory Committee Recommendation Number 11, a suggestion was made that

provisions should be provided for permitting CO alert and alarm levels greater than 5 and 10 ppm. One member of the Advisory Committee suggested that there may be times when the 5 and 10 ppm levels are not ''practical,'' such as in mines using diesel-powered equipment which tend to have higher levels of CO in the air from the combustion of diesel fuel. Diesel-discriminating sensors have proven to be effective in reducing the frequency of false alert and alarm signals which are not the result of fire, but which are due to diesel exhaust. These sensors can allow operators to improve fire detection capabilities by lowering alert and alarm levels. Therefore, MSHA is proposing to limit CO alert and alarm levels to 5 and 10 ppm above ambient, respectively.

The proposed rule, consistent with the Advisory Committee recommendation, does not provide for approving alert and alarm levels for CO sensors installed in accordance with § 75.350(b)(1) greater than 5 and 10 ppm above the ambient level, respectively. This flexibility is not needed because the specified alert and alarm levels are above the ambient level, and because the proposed rule permits the use of time delays or other techniques to reduce non-fire related alert and alarm signals. Although one member of the Advisory Committee believed that higher alert and alarm levels may be more ''practical,'' we do not believe that they provide the protection that is necessary to protect miners by giving them early warning in the case of a fire.

Proposed paragraph (i)(3) would establish alert and alarm levels when an AMS is used to conduct methane tests required by § 75.362(f). It would require the AMS to provide an alert signal at no more than 1.0 percent and an alarm at no more than 1.5 percent methane. This is consistent with the action levels stipulated under existing §§ 75.323(c)(1) and 75.323(c)(2) for methane in the immediate return. Since § 75.323(c) requires specific actions at these concentrations, personnel will receive timely notification with these alert and alarm levels. The proposed rule does not preclude the mine operator from using alert and alarm levels that are lower than those required by the proposed rule.

Proposed § 75.351(j)—Establishing CO ambient levels, would require that CO ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for sensors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c). In order for an AMS with CO sensors to be effective, the ambient level must represent conditions over a broad range of mining activities. We recognize that the ambient level in the mine may vary because of mining conditions and activities. Since mining activities vary from mine to mine, we believe the mine ventilation plan is the most effective tool to set the ambient level. Therefore, the Agency chooses to continue the requirements contained in the petitions for modifications that the ambient level, and the method for determining the ambient level, be specified and approved in the mine ventilation plan. This provides flexibility by allowing more than one ambient level within the mine, and allowing the operator to reestablish ambient levels for some areas. Any changes in the ambient level(s) must be specified and approved in the mine ventilation plan. This is consistent with the existing rule at § 75.371(hh). Further information concerning the setting of an ambient level can be found in the discussion for the definition of CO ambient level.

Proposed paragraph (k) would require an AMS used to comply with §§ 75.323(d)(1)(ii), 340(a)(1)(ii), 340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) be installed and maintained by properly trained personnel. It also requires that the system be maintained in proper operating condition. The Advisory Committee recognized, and we agree, that proper functioning of an AMS is directly related to the quality of the maintenance provided. The Advisory Committee identified and recommended requiring specific skills training for maintenance personnel, such as system operation, calibration, troubleshooting, and system repairs. In paragraph (k) we have proposed that trained personnel perform the maintenance. Although we are not proposing a requirement for a specific training plan for maintenance personnel, as we explained earlier in this preamble, this training would be conducted under existing training programs.

Proposed § 75.351(l) specifies that sensors must be listed and installed in accordance with the recommendations of nationally recognized testing laboratories (NRTLs) approved by the Secretary or be of a type and installed in a manner approved by the Secretary under the procedures outlined in our Program Policy Manual, Volume V for parts 75.1101–5 through 75.1103–5. This volume of MSHA's Program Policy Manual can be found at *http://www.msha.gov/REGS/COMPLIAN/PPM/PMVOL5J.HTM#123. See Section III.* Background for further discussion on using accuracy and performance requirements instead of proposing an approval schedule. Proposed paragraph (l) provides the requirements for CO, smoke, and methane sensors. This section is based on the existing § 75.1103–2(a) which requires components of automatic fire sensor systems in belt entries to be of a type and installed in a manner approved by the Secretary. Alternatively, the components are required to be of a type listed, and installed in accordance with the recommendations of a nationally recognized testing laboratory approved by the Secretary. This proposed rule merely expands the requirement to include methane sensors. The provision for approval by the Secretary is expected to be used for new technology, as MSHA does not have approval standards for these types of sensors. It is expected that NRTL approval of sensors will be the most prevalent vehicle for acceptance of the sensors. The NRTLs are expected to utilize American National Standards when approving or listing the sensors. A review of the standards shows that ANSI/ISA92.01 covers CO sensors; ANSI/ISA12.13 covers combustible gas detectors, including methane sensors; and ANSI/UL 268 covers smoke sensors. It is anticipated that the sensors will be compared to these standards by the NRTLs.

Paragraph (m) of the proposed rule would permit the use of reasonable time delays for preventing the alert or alarm signals from being triggered when the AMS detects non-fire produced CO. The Advisory Committee pointed out a need for reducing the number of non-fire signals to enhance miner confidence in the AMS. They suggested the use of time delays or other computer techniques to reduce the number of alert and alarm signals. MSHA has approved ventilation plans that have included time delays of up to 3 minutes. This practice is consistent with recent petitions and has effectively reduced the number of non-fire produced alert and alarm signals.

We are proposing that the use and length of the time delay be approved in the mine ventilation plan submitted under existing § 75.370. Before approval in the mine ventilation plan, a demonstrated need for time delays must be documented. The total time delay for any given sensor may not exceed three minutes. Agency experience showed this time to be the maximum delay necessary to eliminate diesel-powered generated alert and alarm signals. Consistent with the Advisory Committee report, the proposed rule also would permit other computer or administrative techniques (such as

wave-cross trending, limiting vehicular traffic, and pre-notification of actions that could produce CO to be conducted underground) for reducing the number of non-fire produced alert or alarm signals provided they are approved in the mine ventilation plan. The use of reasonable time delays and other approaches, such as diesel-discriminating sensors have been successful in reducing the number of alert and alarm signals from CO that are not a result of a fire or heating.

We do not consider the use of time delays or other computer or administrative techniques as a replacement for the proper installation and maintenance of the AMS. For example, alert and alarm signals that are the result of short duration spikes caused by radio frequency interference could be eliminated by using shielded cable. Also, if higher levels of CO result from improperly maintained diesel-powered equipment, we would expect correction of this condition per existing regulations before considering approval of a time delay.

Proposed paragraph (n) deals with the examination, testing, and calibration of sensors used as part of an AMS, and is consistent with the Advisory Committee recommendations.

The Advisory Committee recommended that sensors should be visually examined each coal producing shift. Under paragraph (n)(1) at least once each shift when belts are operated as part of a production shift, mine operators would have to visually examine CO or smoke sensors and alarms installed in accordance with § 75.350(b). We are aware of instances where operators have placed sensors in improper locations following belt moves or sensors have been damaged by roof falls or equipment. Sometimes these conditions have gone undetected. Since § 75.362(b) already requires an examination for hazardous conditions in the belt entry once each shift that the belt operates, the sensor examinations could coincide with the on-shift inspection. Paragraph (n)(1) adds the requirement that the sensors be visually examined. It is anticipated that generally this will not cause any additional time to be spent doing the on-shift belt examination. By requiring that sensors and alarms are examined visually each shift, we believe that inoperable or inappropriately placed sensors can be detected and corrected in a timely manner. Under existing § 75.363 a certified person must make a record of misplaced or damaged sensors. This provision would continue to be in effect.

Proposed paragraph (n)(2) would require testing of alarms for operation at least once every seven (7) days for an AMS installed in accordance with §§ 75.350(b) or 75.350(c). Testing of alarms is critical to assure that they will operate properly when needed. The testing method is dependent upon the type of alarm installed.

Paragraph (n)(3) would require the calibration of sensors that are part of an AMS installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) at least every 31 days. Paragraph (n)(3)(i) would require proper calibration of CO sensors with a known concentration of CO in air sufficient to activate the alarm. Paragraph (n)(3)(ii) also would require that smoke sensors be functionally tested according to the manufacturer's specifications. The nature of the functional test would be to subject the sensor to one of the following methods: ''(1) Calibrated test method, (2) Manufacturer's calibrated sensitivity test instrument, (3) Listed control equipment arranged for the purpose, (4) Smoke detector/control unit arrangement whereby the detector causes a signal at the control unit where its sensitivity is outside its listed sensitivity range, [and] (5) Other calibrated sensitivity test methods approved by the authority having jurisdiction to assure that the sensor responds properly'' (NFPA 72).

It has been our experience, and is consistent with manufacturers' recommendations, that the calibration schedule proposed is sufficient to assure proper operation. However, proposed § 75.351(k) requires that AMSs be maintained in proper operating condition. Therefore, if experience at an individual mine indicates that more frequent calibration is necessary to maintain proper operating condition, the operator must calibrate the sensor at an interval sufficient to assure that the performance required by the proposed rule is maintained. In addition, each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications as in paragraph (n)(iii). Calibration must be done with a known concentration of methane in air sufficient to activate the alarm.

Paragraph (n)(4) would require certification of the accuracy of calibration gases as directly traceable to National Institute of Standards and Technology (NIST) standards. Alternatively, paragraph (n)(4) would permit traceability to an analytical standard prepared in a method traceable to NIST. This paragraph is necessary since the accuracy of the calibration gas has a direct bearing on the accuracy and functional performance of the sensor. According to NIST, traceability is ''* * *the property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons all having stated uncertainties.'' The NIST standard is a physical standard: ''Only measurement results and values of standards are traceable. To support a claim (of traceability), the provider of a measurement result or value of a standard must document the measurement process or system used to establish the claim and provide a description of the chain of comparisons that were used to establish a connection to a particular stated reference. All of the information regarding traceability to NIST is available on-line at *http://www.nist.gov/traceability.*

Paragraph (o), consistent with an Advisory Committee recommendation, would require certain records to be maintained when an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f). Records of the type proposed provide a history of system performance and mine operator response. They are considered essential to the operation of an effective system and can be invaluable in determining sources of recurring alert and alarm signals and system malfunctions.

Proposed § 75.351(o)(1) would require that the responsible person designated by the operator maintain the following records: record of alert and alarm signals, record of malfunctions and corrective actions, record of seven day test of alert and alarm signals, calibrations, and maintenance performed on the AMS. The responsible person would create these records at the end of the shift as these situations occur. Paragraph (o)(1)(i) would require that a record be kept of all alert and alarm signal activations. The required record would include the date, time, location and type of sensor, and the cause of the activation. Proposed paragraph (o)(1)(ii) would require a record to be made of all AMS malfunctions. This record would contain the date, extent, and cause of the malfunction. It would also include the corrective action taken to return the system to proper operation. As specified by this section, the records required by paragraphs (o)(1)(i) and (ii) would be made by the responsible person.

Proposed paragraph (o)(1)(iii) would require that a record also be maintained

of the weekly test of alert and alarm signals, calibrations, and maintenance of the system. Unlike the records required by paragraphs (o)(1)(i) and (ii), the records required by paragraph (o)(1)(iii) would be made by the person(s) doing the test, calibration, or maintenance. These individuals have firsthand knowledge of how the sensors performed during their calibration and testing and any maintenance required.

Proposed paragraph (o)(2) would require the person entering the record to include their name, title, date, and signature. These records are necessary because they will document the test, calibration, and maintenance history of the AMS and will provide the operator with an overall perspective of how the AMS is operating.

Consistent with other requirements of this subpart, proposed paragraph (o)(3) would require that all records required by this section be maintained in a secure book that is not susceptible to alteration or electronically in a computer system that is secure and not susceptible to alteration. This section requires that these records be maintained separately from any other record and be easily identifiable by a title, such as the ''AMS log.''

Proposed paragraph (p) would require all records to be maintained for one year at a surface location at the mine and made would be made available for inspection by miners and authorized representatives of the Secretary. Proposed paragraphs (o) and (p) are consistent with the Advisory Committee recommendations, existing regulations, and recent petitions. This proposed section is intended to assure that these records are maintained and made available, and that the appropriate level of mine management is made aware of conditions or problems requiring attention. The proposed rule also would help to assure the integrity of records and enable mine management to review the quality of the examinations. Consistent with existing standards in this part, we intend the term ''secure and not susceptible to alteration'' when applied to electronic storage to mean that the stored record cannot be modified. One example of acceptable electronic storage would be a ''write once, read many'' file.

Proposed paragraph (q) would require that all AMS operators be trained annually in the proper operation of the AMS. MSHA believes that the training program for an AMS operator should address at least two topics. These include:

1. The hardware and software operation of the system, and

2. Provisions and requirements of the ventilation plan, fire fighting and evacuation plan, and the requirements of this rule.

The hardware training should at least include the following subjects:

1. A complete AMS overview, including orientation with the central computer system and its components, the data highway, outstations, and sensors.

2. Common system problems and diagnostic tools, as well as any special features of the system.

The software operation training should include at least the following subjects:

1. Basic computer operating systems, such as MS–DOS or Windows.

2. CMOS setup, board(s), jumper and address settings, directory and file allocation, program start-up, logging in/out of system, system shutdown and other AMS software functions.

3. Printing, editing sensor points, setting communication parameters, creating reports, and device controls.

4. Special features of the system, such as networking, graphics editing, and database management.

And, finally, AMS operators would need to be trained on the following issues:

1. The provisions and requirements of the ventilation plan, fire fighting and evacuation plan, and

2. The requirements of this rule.

A record of the content of training, the person conducting the training, and the date the training was conducted, would have to be maintained at the mine by the mine operator. This record would have to be maintained for at least one year. This training would assure that the AMS operator maintains proficiency in the operation of the AMS and the understanding of his/her responsibility under this rule.

Proposed paragraph (r) would require that when an AMS is used to comply with § 75.350(b), a two-way voice communication system, as required by § 75.351(b)(1), must be installed in a separate entry than the AMS. The ability to communicate is essential during emergency situations, such as a fire. Therefore, it is critical that at least one line of communication remain intact. In the event of a roof fall, fire, or other event in one entry that could damage either the AMS or the two-way voice communication, it is more likely that one of these systems will remain functional when installed in an alternate entry, thus providing an additional measure of protection.

Section 75.352 Actions in Response to AMS Malfunction, Alert, or Alarm Signals

The designated AMS operator or other designated person referred to in § 75.352(a) must be clearly identified by name or title and the name or title must be posted at the mine. Paragraph (a) of proposed § 75.352 sets out the actions to be followed when any malfunction, alert, or alarm signal is received from a CO, smoke, or an equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c). These actions are required unless the cause of the alert or alarm signal is known not to be a hazard to the miners. If the cause of the alert or alarm signal is known not to represent a hazard, such as sensor calibration, or cutting and welding, the proposed rule would not require notification of affected workers. However, we would still require a record of these events under proposed § 75.351(o).

The Advisory Committee recommended the automatic activation of signals on the working section when the CO concentration reaches the alert level. However, we believe that automatic activation of signals on the working section at alert levels could potentially inhibit the system's effectiveness if a ''cry wolf'' syndrome develops. Therefore, we have not included this requirement in this proposed rule. This is consistent with recent belt air petition requirements. Under this condition, a miner receiving an alert signal from an AMS that later is determined not to represent a hazard may lose confidence in the system and become desensitized to alarms. Such a situation reduces a miner's confidence in the AMS and may reduce the importance of an alarm to the worker. We believe that the procedures outlined in proposed § 75.352(a)(1) would provide the early warning intended under an alert or malfunction condition. Proposed § 75.352(a)(1) would require that when the alert level is reached or a malfunction occurs, the sensor involved is identified, appropriate personnel are notified, and an examination is immediately begun to find the cause of the alert or malfunction signal.

Proposed paragraph (a)(2) would require that when an alarm level is reached, appropriate personnel need to be notified, including miners in affected working sections, in areas where mechanized mining equipment is being installed or removed, and in other locations specified in the approved program of instruction as set forth in

§ 75.1502. MSHA expects the program of instruction (mine emergency and firefighting plan) will be modified to reflect the actions required § 75.352.

Proposed paragraph (b) would require that when contaminant concentration levels for any CO, smoke, or equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) exceeds the specified alert or alarm level, the following procedures would have to be followed unless the cause of the alert or alarm signal is known not to be a hazard to the miners:

Under proposed paragraph (b)(1), when an alert signal is given, the sensor activated would have to be identified and an examination would have to begin immediately to determine the cause of the alert signal.

Under proposed paragraph (b)(2), when an alarm is given, the sensor that is activated would have to be identified, and the mine emergency evacuation and firefighting procedures initiated as required by the approved program of instruction (§ 75.1502). At a minimum, all personnel in the affected area, unless assigned other duties in the approved program of instruction (§ 75.1502), would have to be promptly evacuated outby the next functioning sensor upwind of the alarming sensor.

In developing this proposed rule, we have attempted to assure that the AMS used represents the state-of-the-art in monitoring. However, no matter how effective the monitoring system is, the safety of those miners affected by the event causing the alert or alarm signal is related to their reaction to the alert or alarm signal. We intend proposed paragraphs (b)(1) through (b)(2) to assure that the mine operator acts to protect the affected miners when an AMS activates an alert or alarm signal.

Paragraph (c) of proposed § 75.352 addresses the action required in case of an alarm from a methane sensor. These would include methane sensors installed in accordance with §§ 75.323(d)(1)(ii) and 75.362(f). The specific actions required by the proposed rule would include identification of the sensor that is causing the alarm and an investigation into the cause of the alarm. This action must also be consistent with the requirements of existing §§ 75.323(c) and § 75.323(d).

Proposed § 75.352(d) addresses the actions required if any fire detection component of the AMS malfunctions or is inoperative. The proposed rule would require the operator to take immediate action to return the system to proper operation. It is our intention that the belt would not operate if all or part of an AMS installed in accordance with §§ 75.350(b) or 75.350(c) becomes inoperative unless the actions specified in paragraph (d) are taken. The proposed standard is consistent with the Advisory Committee recommendation and with recent petitions that permit the use of belt air to ventilate working places.

Paragraph (d)(1) would cover those instances when one sensor becomes inoperative. Under this condition, we would require the operator to station a person trained in the use of hand-held devices to continually monitor for CO or smoke near the inoperative sensor.

This action is consistent with current requirements in granted petitions and gives the mine operator needed information on the atmosphere at the location of the inoperative sensor.

Paragraph (d)(2) specifies the monitoring that would be required if two or more adjacent AMS sensors become inoperative. Under the proposed rule, a sufficient number of trained persons would be required to patrol and continuously monitor the area affected so that the area is traveled each hour in its entirety. As an alternative under (d)(2), the operator could station a trained person near each inoperative sensor to continuously monitor CO or smoke.

These actions are consistent with current requirements in granted petitions and give the mine operator needed information on the atmosphere at the locations of the inoperative sensors.

Proposed paragraph (d)(3) would specify actions required if the complete system becomes inoperative. When determining what is complete system failure, we do not mean that every component of the system does not function. It is intended that this paragraph of the proposed rule would apply when part of the system is inoperative to render the system incapable of performing its intended function. For example, if a break in the data transmission line occurs that does not permit sensors to communicate with the central processing unit (CPU) on the surface or if the CPU itself becomes inoperative although all underground components continue to operate, the entire system should be considered inoperative. When the entire system becomes inoperative, paragraph (d)(3) would require the mine operator to take immediate action to have trained persons patrol and continuously monitor for CO or smoke so that the affected belt entry(ies) is traveled each hour in its entirety. This means, as an example, that the affected area is traveled in its entirety between 1 pm and 2 pm and then traveled again in its entirety between 2 pm and 3 pm, and so on.

When monitoring is conducted during times of system or sensor malfunction, the person doing the monitoring must be qualified to make these tests. As specified in (d)(4), the person would have communication available with the designated surface location or communication available at intervals not to exceed 2,000 feet. This could be a mine phone, telephone, trolley phone, or radio location. Easily accessible communication is necessary to ensure quick notification to the designated surface location when an alert or alarm level is reached.

Paragraph (d)(5) would require the trained persons monitoring under this section to report the concentrations detected at the affected AMS sensor(s) at intervals not to exceed an hour. This action gives the mine operator needed information on the atmosphere at the locations of the affected sensors. It also requires that the person monitoring under this part immediately report levels of contaminants reaching the specified alert and alarm levels unless the cause of the contaminant is known not to represent a hazard. In addition, for mines using a time delay, persons monitoring under this section would be expected to report the concentrations immediately following the expiration of the applicable time delay.

Paragraph (d)(6) would require that instruments used to comply with this paragraph have a level of detectability comparable to those required for AMS sensors by proposed § 75.351(l). Hand-held methane and CO detectors are commercially available. Some AMS sensors do not have commercially available hand-held counterparts, so that an alternate instrument would be needed as proposed in (d)(7). For example, smoke sensors which malfunction will require monitoring with an alternate sensor, perhaps a hand-held CO detector, with alert and alarm levels to be specified and approved in the mine ventilation plan.

Paragraph (e) requires that if the 50-fpm minimum air velocity is not maintained in the belt entry as required in proposed § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. It also requires that while the 50-fpm air velocity is not maintained, trained persons must patrol and continuously monitor for CO or smoke as set forth in § 75.352(d) so that the affected belt entry(ies) is traveled each hour in its entirety. As discussed previously, contaminants must reach the sensors in order to be detected. Less than a 50-fpm

velocity with 1,000-foot sensor spacing is considered a system failure because air currents will not carry sufficient amount of contaminants to the sensors for detection. This is considered a system failure since the system is not able to provide adequate warning.

Section 75.371 Mine ventilation plan, contents.

Section 75.371 sets forth the information that the mine operator must include in the mine ventilation plan. The mine ventilation plan is mine specific and is designed to permit safe and healthful operation of the mine by ensuring that ventilation is sufficient to dilute and render harmless hazardous components of mine air such as carbon monoxide and methane, and provide necessary levels of oxygen to the mine working environment.

We are proposing to add six requirements to the mine ventilation plan. These new paragraphs, §§ 75.371(ii) through (nn), would require certain information to be specified and approved. Under the proposed rule, the existing paragraphs (ii) through (nn) would be redesignated as (oo) through (vv).

Existing § 75.371(hh) requires that the mine ventilation plan specify the ambient level in parts per million of CO, and the method for determining the ambient level. The proposed rule, § 75.351(j), does not change this requirement.

Proposed paragraph (ii), in accordance with proposed § 75.350(b)(3), requires the locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections and setup or removal areas. As discussed under proposed § 75.350(b)(3), the Advisory Committee determined that multiple designated areas should be established for mines using belt air to ventilate working places.

Proposed paragraph (jj), in accordance with § 75.350(c)(5), requires the location of all point-feed regulators be indicated in the mine ventilation plan to control the number and location of point-feed regulators.

Proposed paragraph (kk), in accordance with § 75.351(e)(5), requires the location of any additional CO or smoke sensor required by the district manager. Proposed §§ 75.351(e)(1) through (e)(4) specify the required locations where sensors monitor CO or smoke along belts. We recognize instances may occur when additional sensors are necessary to provide the desired level of protection. In those cases, proposed § 75.351(e)(5) would require that these locations be specified and approved in the mine ventilation plan. We do not intend that every mine ventilation plan would require additional sensors to be specified. Only in those cases when additional sensors are necessary would the mine ventilation plan contain this information.

Proposed paragraph (ll), in accordance with § 75.351(m), requires the length of time delays or other methods (a sophisticated algorithm similar to that employed by the diesel discriminator, human intervention, controlling or limiting diesel equipment operation) used to reduce the number of non-fire related alert and alarm signals from the AMS. Proposed § 75.351(m) requires that the length of the delays be specified and approved in the mine ventilation plan. Proposed § 75.351(m) also requires that computer techniques or administrative controls used to reduce the number of non-fire alert and alarm signals be approved in the mine ventilation plan. As discussed under proposed § 75.351(m) the use of reasonable time delays and other computer techniques have been successful in reducing the number of non-fire alert and alarm signals. However, because these techniques should be used only when necessary (when nuisance alarms are excessive) and should delay the activation of alert and alarm signals for the shortest time possible, they should be specified and approved in the mine ventilation plan.

Proposed paragraph (mm), in accordance with § 75.351(i)(2), requires that when lower alert and alarm settings for CO sensors are required by the district manager they be specified in the mine ventilation plan.

Proposed paragraph (nn), in accordance with § 75.352(d)(7), requires that non-AMS sensors (the alternate detectors) be approved in the ventilation plan if it can be used to monitor the belt entry in the case of an AMS malfunction. This provision would permit the use of a CO detector to monitor a belt entry equipped with smoke sensors. Such a CO detector would be used if it meets the levels of detectability that would be expected if it were used in place of an AMS with CO sensors.

Section 75.372 Mine ventilation map.

Existing § 75.372 (b)(16) requires that the location of all AMS sensors be shown on the ventilation map. Under the proposed rule this requirement would be modified to require that the type of sensor also be shown on the ventilation map. With the anticipated increased usage of sensors other than CO sensors, it is important that persons who may be called upon to respond to alert and alarm signals have information available that tells them both the type and location of these sensors.

Section 75.380(g) Escapeway; bituminous and lignite mines.

Proposed paragraph (g) of § 75.380 would require that the primary escapeway be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the mine ventilation plan and does not pose a hazard to miners. This modification to existing § 75.380(g) allows point-feed regulators to be installed and monitored when additional intake air is required in the belt air course according to proposed § 75.350(c). Exceptions to this proposed provision include where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and as provided in § 75.350(c).

V. Paperwork Reduction Act

This proposed rule contains information collection requirements in various provisions. The PREA is located on our website at *http://www.msha.gov/REGSINFO.HTM.* These proposed paperwork requirements are under OMB Control Numbers 1219–0065, 1219–0067, 1219–0073, and 1219–0088 and have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. Comments on the proposed paperwork provisions should be sent to both the Office of Information and Regulatory Affairs of OMB and to MSHA. Comments sent to OMB should be sent to the Attention of the Desk Officer for the Mine Safety and Health Administration. Comments sent to MSHA should be sent to the Office of Standards, Regulations, and Variances. Addresses for both offices can be found in the **ADDRESSES** section of this preamble.

MSHA estimates that the proposed rule would create 18,609 burden hours for the first year, 19,170 burden hours for the second year, and 19,999 burden hours for the third year, for a total of 57,776 burden hours for Years 1 through 3 combined. This is associated with an annualized value of 19,520 hours per year and related annualized costs of $973,313 per year.

On a per-mine basis, MSHA estimates the same paperwork burdens for both new and existing mines that use belt air.

However, MSHA estimates that as time goes by a greater proportion of new coal mines using three or more entries will choose to use belt air. This means that the number of mines using belt air will increase over time. This greater number of mines using belt air will increase the total burden hours and paperwork cost over time. Hence, second year hours and costs are greater than first year hours and costs, and third year hours and costs are greater than second year hours and costs.

The paperwork burden is summarized by total annualized burden hours by proposed provision (Table 4) and by total annualized burden costs by proposed provision (Table 5).

Numerous provisions would require action to modify the mine ventilation plan. Proposed paragraph 75.351(j) would require modification of the mine ventilation plan to include ambient CO levels and the means used to determine them. Proposed paragraph 75.351(m) would require that the mine ventilation plan be modified to show the use and length of time-delays of any non-fire related CO sensor signals. Proposed paragraphs 75.371(ll), 75.371(mm), and 75.371(nn) would require modification of the mine ventilation plan to show the length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from CO sensors, the lower alert and alarm setting for CO sensors, and the alternate instrument and the alert and alarm levels associated with the instrument, respectively. This proposed rule would also have an impact on existing paperwork requirements in 75.371(hh) on the ambient level in parts per million of CO, and the method for determining the ambient level, in all areas where CO sensors are installed.

Proposed paragraph 75.351(n)(1) would require sensors used to detect CO or smoke be visually examined at least once each shift, when belts are operated as part of a production shift. If hazardous conditions are found during the visual exam, then a log of such conditions must be filed under existing § 75.363(b)—Hazardous conditions; posting, correcting and recording. Proposed paragraphs 75.351(n)(2) and 75.351(n)(3) would require that a log be kept of every seven day alarm test and every 31-day CO, smoke, or methane sensor calibration, respectively.

Proposed paragraph 75.351(o)(1)(i) would require that a record be made if the AMS emits an alert or alarm signal. The record would consist of the date, time, location and type of sensor, and the reason for its activation. Proposed paragraph (o)(1)(ii) would require that, if a malfunction in the system occurs, a record be made of the malfunction and the corrective action to return the system to proper operating condition. We (MSHA) believe that such records would be useful to the miner, the mine operator, and the Agency in determining areas of recurring problems. This would aid in ensuring proper operation of AMS.

Proposed paragraph (o)(1)(iii) would require that the persons doing the weekly test of alert and alarm signals, the monthly calibration, or maintenance of the system make a record of these tests, calibrations, or maintenance. Proposed paragraph § 75.351(o)(3) would require that all records concerning the AMS be kept in a book or electronically in a computer system, that would be secure and not susceptible to alteration. Proposed paragraph 75.351(p) would require the mine operator to keep these records for at least one year at a surface location and to make them available for inspection by authorized representatives of the Secretary and representatives of miners.

Proposed paragraph 75.351(q) would require that AMS operators receive training annually and that a record of this training be kept. The record of training would include the content of training, the person conducting the training, and the date the training was conducted. The record would need to be maintained at the mine site by the mine operator for at least one year.

Proposed paragraphs 75.352(a) and 75.352(b) would require the designated AMS operator or other designated responsible person to take actions promptly when malfunction, alert, or alarm signals are received. These proposed requirements are parallel to those of § 75.351(o).

TABLE 4.—TOTAL BURDEN HOURS OF PROPOSED RULE

[Summary of all burden hours, by mine size and by provision]

Provision	Annualized burden hours [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10, and 44.11	(59.51)	(161.07)	(125.20)	(8.58)	(354.35)
§§ 75.351(j)	16.81	43.55	29.71	1.82	91.88
§ 75.351(j), implied impact on existing § 75.371(hh)	0.53	1.36	0.93	0.06	2.87
§§ 75.351(m)	0.75	8.93	15.63	1.45	26.76
§§ 75.351(n)(1), implied impact on existing § 75.363(b)	1.96	5.16	8.72	1.20	17.03
§§ 75.351(n)(2)	190.73	1,005.54	1,700.55	156.00	3,052.82
§§ 75.351(n)(3)	220.07	2,320.48	7,848.70	900.00	11,289.25
§§ 75.351(o)(1)(i) & (ii)	9.74	163.68	876.52	135.15	1,185.09
§§ 75.351(o)(1)(iii)	32.28	273.30	811.03	90.40	1,207.01
§§ 75.351(q)	135.71	512.44	752.17	63.75	1,464.07
§§ 75.352(a) & (b)	61.62	397.99	975.91	100.75	1,536.27
§§ 75.371(ll)	0.02	0.28	0.49	0.05	0.84
§§ 75.371(mm)	0.05	0.14	0.09	0.01	0.29
§§ 75.371(nn)	0.11	0.27	0.19	0.01	0.57
Total	610.86	4,572.03	12,895.44	1,442.07	19,520.40

[1] Source: Chapter VII of the Preliminary Regulatory Economic Analysis.

TABLE 5.—TOTAL BURDEN COSTS OF PROPOSED RULE

[Summary of all burden costs, by mine size and by provision]

Provision	Annualized burden costs [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10, and 44.11	($3,268)	($8,846)	($6,876)	($471)	($19,461)
§§ 75.351(j)	923	2,391	1,632	100	5,046
§ 75.351(j), implied impact on existing §§ 75.371(hh)	29	75	51	3	158
§§ 75.351(m)	41	490	858	80	1,470
§§ 75.351(n)(1), implied impact on existing § 75.363(b)	55	145	245	34	478
§§ 75.351(n)(2)	10,475	55,224	93,394	8,568	167,661
§§ 75.351(n)(3)	12,086	127,441	431,051	49,428	620,005
§§ 75.351(o)(1)(i) & (ii)	273	4,595	24,604	3,794	33,266
§§ 75.351(o)(1)(iii)	1,773	15,010	44,542	4,965	66,289
§§ 75.351(q)	5,877	19,836	27,260	2,212	55,185
§§ 75.352(a) & (b)	1,730	11,171	27,394	2,828	43,123
§§ 75.371(ll)	1	15	27	2	46
§§ 75.371(mm)	3	7	5	0	16
§§ 75.371(nn)	6	15	10	1	32
Total	30,004	227,570	644,196	71,543	973,313

[1] Source: Chapter VII of the Preliminary Regulatory Economic Analysis.

VI. Executive Order 12866 (Regulatory Planning and Review) and Regulatory Flexibility Act

Executive Order (E.O.) 12866 (58 FR 51735) as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385)) requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this proposed rule would not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically ''significant regulatory action'' pursuant to § 3(f) of E.O. 12866. However, we have determined that this proposed rule is significant under § 3(f) of E.O. 12866, which defines a significant regulatory action as one that may ''* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' MSHA completed a Preliminary Regulatory Economic Analysis (PREA) in which the economic impact of the rule is estimated. The PREA is available from MSHA and is summarized as follows.

A. Population-at-Risk

MSHA estimates that this rulemaking would initially affect approximately 11,313 miners at 88 underground coal mines which choose to use belt air at the working places during the first year of the proposed rule. MSHA also estimates that this rulemaking would additionally affect approximately 2,358 miners at 30 underground coal mines which choose to point feed the belt air, but do not use belt air at the working places, during the first year of the proposed rule. Accordingly, MSHA estimates that this rulemaking would affect a total of approximately 13,671 miners at 118 underground coal mines during the first year of the proposed rule.

B. Benefits

MSHA has qualitatively determined that the proposed rule, to permit use of belt air at the working places, yields net health and safety benefits relative to the existing rule, which does not permit use of belt air at the working places. The proposed rule does not create any health or safety hazards relative to current petition practice, which also permits use of belt air at the working places.

The main requirement of the proposed rule is that the mine operator who chooses to use belt air must install an atmospheric monitoring system (AMS) in the belt entry for fire detection. The AMS composed of CO or smoke sensors provides early warning fire detection that is superior to that provided by point-type heat sensors. This added level of protection is beneficial to both workers and the mine owner.

The AMS is beneficial to the mine operator because early warning of a mine fire provides maximal opportunity for extinguishing the fire. An uncontrolled mine fire can damage or destroy a coal mine and can delay or prevent future mining of coal in the affected mine. The AMS is beneficial to workers, because the early warning of fire from an AMS permits more time for miners to escape. Early warning from the AMS also gives the firefighting crew more time to fight or extinguish a fire before it creates a serious mine fire accident or disaster.

The proposed rule utilizes the common interests of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident. By reducing regulatory hurdles to the use of belt air at the working places, the proposed rule would provide additional encouragement for mine operators to install an AMS. The installation of AMS in additional mines would reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property.

In addition, MSHA's experience with belt air petitions indicates that, with proper precautions, allowing belt air to ventilate working places can achieve net health and safety benefits. Belt air usage can result in an increase in the quantity of air in the belt entry and other common entries (belt air course). This provides increased protection to miners against hazards created by elevated levels of methane, other harmful gases, and respirable dust.

Prevention of mine fires can also benefit local communities. In the event a mine fire is uncontrolled, persons living in the area of the mine may need to be evacuated for several days due to the smoke and toxic fumes escaping to the surface from a mine fire. In addition, there can be long-term adverse economic impacts on a community

when a mine fire shuts down a coal mine.

C. Compliance Costs

The proposed rule revises various sections of part 75, which regulates underground coal mines. These revised sections include § 75.301 Definitions, § 75.350 Air courses and belt haulage entries (title revised to Belt air course ventilation), § 75.351 Atmospheric monitoring systems, § 75.352 Return air courses (title revised to Actions in response to AMS alert and alarm signals or malfunctions), § 75.371 Mine ventilation plan, § 75.372 Mine ventilation map, and § 75.380(g) Escapeway; bituminous and lignite mines.

The main substantive changes of the proposed rule are for three-or-more-entry mines that voluntarily choose to use belt air as intake air to ventilate the working places of the coal mine. Three-or-more-entry mines that choose to ventilate the working places with belt air are required to use an atmospheric monitoring system (AMS) to assure worker safety. A secondary substantive change applies to three-or-more entry mines that voluntarily choose to point feed the belt air course.

There are no substantive changes in the proposed rule that apply to any mine that chooses not to use belt air at the working places, and that chooses not to point feed the belt air. Two-entry mines are also not impacted by the proposed rule.

Because all changes impact only mines that voluntarily undertake certain actions, there are only net cost savings from the proposed rule. This is because MSHA presumes that no mine operator would install and use an AMS in order to use belt air unless the mine operator anticipated cost savings as a result.

The primary cost savings from the proposed rule accrue to underground coal mines that choose to use belt air at the working places. Total cost savings from this source are estimated at approximately $650,000 per year. These cost savings for the belt-air mines also include cost savings from point feeding.

Secondary cost savings of the proposed rule accrue to mines that choose to point feed the belt air, but choose not to use belt air at the working sections. For these mines, the cost savings from point feeding are estimated at $31 thousand per year. In total, the cost savings from the proposed rule are approximately $680,000 per year.

D. Economic Impact

The proposed rule will enhance safety in belt air mines while utilizing the common incentive of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident.

MSHA believes that the estimated cost savings of this proposed rule are conservative because contested petition costs were not included in the preliminary economic analysis. If a petition is contested, the costs to the petitioner could increase by as much as $100,000.

The proposed rule provides additional encouragement for mine operators to install an AMS by reducing regulatory hurdles to the use of belt air at the working places. The installation of AMSs in additional mines will reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property. Mine operators are inherently interested in avoiding these catastrophic incidents that could result in the lost of the mine. This proposed rule would mandate the proper installation and maintenance of AMSs that would serve to further protect mine property from these catastrophic incidents.

MSHA has concluded that the proposed rule will have only a small (but favorable) effect on coal output, price, and profitability.

E. Feasibility

MSHA has concluded that the requirements of the proposed rule are both technologically and economically feasible.

This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. The technology to monitor the mine atmosphere and to alert miners of hazards involve available, off-the-shelf technologies that are currently being used in many mines. Also, standard procedures used to safeguard the safety of miners are approved by the Agency through the mine's fire fighting and evacuation plan. Other provisions of the proposed rule will reduce petition requirements.

The proposed rule is clearly economically feasible insofar as it will reduce costs for the mining industry while increasing the use of AMSs to monitor the mine atmosphere. The primary cost savings of $654,000 per year from the proposed rule come from the ability of underground coal mines to use belt air. Approximately 70 percent of these cost savings are generated from reduced shaft-sinking costs for new mines. The other 30 percent of cost savings come from energy cost savings from reductions in ventilation fan power (25%) and elimination of the petition for modification process (legal and administrative costs—5%). The secondary cost savings of $31,000 per year from the proposed rule come from mines that choose not to use belt air to ventilate working sections but that do take advantage of the point-feeding provision that applies to all three-or-more entry mines. In total, the cost savings from the proposed rule are $685,728 per year.

The proposed rule would provide for a safe mining environment and would facilitate the use of technologically advanced fire-detection systems. In addition, there would no longer be a time delay for approval due to the petition process. Mine operators could use belt air to ventilate working sections as soon as they are in compliance with the rule.

F. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires regulatory agencies to consider a rule's impact on small entities. For the purposes of the RFA and this preliminary determination, MSHA has analyzed the impact of the proposed rule and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities that are affected by this rulemaking.

MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all underground coal mine operators and miners' representatives. The proposed rule will also be placed on MSHA's Internet Homepage at *http://www.msha.gov,* under Statutory and Regulatory Information.

In accordance with RFA and its amendments at 5 U.S.C. 605(b), MSHA has determined that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations will be affected.

The RFA, as amended, at 5 U.S.C. § 605(b) also requires MSHA to include in the proposed rule a factual basis for this preliminary determination. This information must be published in the **Federal Register**.

Factual Basis for Certification

The Agency compared the gross costs of the rule for small mines in each sector to the revenue for that sector for both size categories analyzed (MSHA and Small Business Administration ''small entity'' definitions). Given that the gross compliance costs for small mines is substantially less than 1 percent of revenue and that net costs are

negative, MSHA concludes that there is no significant cost impact of the rule on small entities. For both definitions of a small mine, the net cost of the proposed rule is negative. Since the proposed rule results in net cost savings, there would not be any burden placed on small mine operators. Accordingly, MSHA preliminarily certifies that there is no significant impact on a substantial number of small coal mining entities that are affected by this rule.

VII. Other Regulatory Analyses

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875 (58 FR 58093), this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 13132 (Federalism)

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 (64 FR 43255) regarding federalism, and has determined that it does not have ''federalism implications.'' The proposed rule would 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.'' There are no underground coal mines owned or operated by any State governments.

C. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, 62 FR 19885, MSHA has evaluated the environmental health and safety effect of the proposed rule on children. The Agency has determined that the proposed rule will have no effect on children.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

In accordance with Executive Order 13175 (63 FR 27655), MSHA certifies that the proposed rule does not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any Indian tribal governments which either own or operate underground coal mines.

E. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, 53 FR 8859, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988 (61 FR 4729) and determined that this proposed rule would not unduly burden the Federal court system. The proposed rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, 66 FR 28355, MSHA has reviewed this proposed rule for its energy impacts. MSHA has determined that this proposed rule would not have any adverse effects on energy supply, distribution, or use.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the PREA, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Petitions for Modification

On the effective date of the final rule, all existing petitions for modification for belt air used to ventilate working places under § 75.350 in mines with sections developed using three or more entries will be superseded. Mine operators will thereafter be required to comply with the provisions of the final rule. However, all existing two-entry petition requirements will remain in effect and will not be superseded by this rule. Future two-entry mines will need to continue to file petitions to use belt air, since proposed § 75.350(a) prohibits placing the conveyor belt in the return.

List of Subjects in 30 CFR Part 75

Communications equipment, Emergency medical services, Explosives, Fire prevention, Mandatory safety standards, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines, Ventilation.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

It is proposed to amend, for the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Amend § 75.301 by adding the following definitions:

§ 75.301 Definitions.

* * * * *

AMS operator. The person(s) designated by the mine operator located on the surface of the mine who monitors the malfunction, alert, or alarm signals of the AMS and notifies appropriate personnel to these signals.

* * * * *

Appropriate Personnel. The person or persons designated by the operator to perform specific tasks in response to AMS signals.

* * * * *

Atmospheric Monitoring System (AMS).

(1) A network consisting of hardware and software meeting the requirements of §§ 75.351 and 75.1103–2 and capable of:

(i) Measuring atmospheric parameters;

(ii) Transmitting the measurements to a designated surface location;

(iii) Providing alert and alarm signals;

(iv) Processing and cataloging atmospheric data; and,

(v) Providing reports.

(2) Early-warning fire detection systems using newer technology that provide equal or greater protection, as determined by the Secretary, will be considered an atmospheric monitoring system for the purposes of this subpart.

* * * * *

Belt air course. The entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface.

* * * * *

Carbon monoxide ambient level. The average concentration of carbon monoxide detected in an air course containing carbon monoxide sensors. This average is representative of the composition of the mine atmosphere during a non-fire condition.

* * * * *

Point feeding. The process of providing additional intake air to the belt air course from another intake air course through a regulator.

* * * * *

3. Revise § 75.350 to read as follows:

§ 75.350 Belt air course ventilation.

(a) The belt air course must not be used as a return air course; and except as provided in paragraph (b) of this section, the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed. The belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses except as provided in paragraph (c) of this section.

(b) Air from a belt air course may be used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, provided the following requirements are met:

(1) The belt entry must be equipped with an AMS installed, operated, examined, and maintained as specified in § 75.351.

(2) All miners, including newly hired miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training may be conducted as part of a miner's 30 CFR part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8).

(3) The average concentration of respirable dust in the belt air course (the intake air course) must be maintained at or below 1.0 mg/m^3. A permanent designated area (DA) for dust measurements must be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. The DA must be specified and approved in the ventilation plan.

(4) The primary escapeway must be monitored for carbon monoxide or smoke as specified in § 75.351(f).

(5) The section must be developed with three or more entries.

(c) Notwithstanding the provisions of § 75.380(g), additional intake air may be added to the belt air course through a point-feed regulator. The location and use of point feeds must be approved in the mine ventilation plan. If the air through the point feed enters a belt air course which is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, the following conditions must be met:

(1) The air current that will pass through the point-feed regulator must be monitored for carbon monoxide or smoke at a point within 50 feet upwind of the point-feed regulator;

(2) The air in the belt air course must be monitored for carbon monoxide or smoke upwind of the point-feed regulator. This sensor must be in the belt air course within 50 feet of the mixing point where air flowing through the point-feed regulator mixes with the belt air;

(3) The point-feed regulator must be provided with a means to close the regulator from either air course without requiring a person to enter the air stream passing through the point-feed regulator;

(4) A minimum air velocity of 300 feet per minute must be maintained through the point-feed regulator.

(5) The location of a point-feed regulator(s) must be approved in the mine ventilation plan and the location(s) shown on the mine ventilation map; and

(6) An AMS must be installed, operated, examined, and maintained as specified in § 75.351.

4. Revise § 75.351, to read as follows:

§ 75.351 Atmospheric monitoring systems.

(a) *AMS operation.* Whenever personnel are underground and an AMS is being used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where signals from the AMS can be seen and heard and the operator can promptly respond to these signals. However, for extended idle periods exceeding 24 hours, when the belt is not operating, the requirements of §§ 75.350(b) and 75.350(c) will not apply after the initial 24 hour idle period. All provisions of this section will become applicable one hour prior to belt start-up following this idle period.

(b) *Designated surface location and AMS operator.* When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the following requirements apply:

(1) The mine operator must designate a surface location at the mine or at another location approved by the district manager where signals from the AMS will be received and two-way voice communication is maintained with each working section, areas where mechanized equipment is being installed or removed, and other areas designated in the approved program of instruction (§ 75.1502).

(2) The mine operator must designate an AMS operator to monitor the AMS signals and be at a location on the mine surface where the AMS operator can promptly respond to all signals from the AMS.

(3) A map or schematic must be provided at the designated surface location and updated daily that shows the locations and type of AMS sensor at each location and the intended air flow direction at these locations.

(4) The names of the designated AMS operators, appropriate personnel, and responsible persons referred to in § 75.352, and the method to contact these persons must be provided at the designated surface location.

(c) *Minimum operating requirements.* AMSs used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) must:

(1) Automatically provide a signal that can be seen or heard by the AMS operator at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system.

(2) Automatically provide an alert signal that can be seen or heard by the AMS operator at the designated surface location and is distinguishable from alarm signals, when the carbon monoxide concentration or methane concentration at any sensor reaches the alert level as specified in paragraph (i) of this section.

(3) Automatically provide signals that can be seen and heard by the AMS operator at the designated surface location when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section.

(4) Automatically provide visual and audible alarm signals at all affected working sections and at all affected areas where mechanized equipment is being installed or removed when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section. The signals must be capable of being seen and heard by miners working at these locations.

Methane alarm signals must be distinguishable from other signals.

(5) Automatically provide an alarm signal that can be seen and heard by miners in other locations as specified in the approved program of instruction (§ 75.1502) when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section.

(6) Identify at the designated surface location the operational status of all sensors.

(d) *Location and installation of AMS sensors.* (1) All AMS sensors, as specified in paragraphs (e) through (h) of this section, must be located such that measurements are representative of the atmosphere.

(2) Carbon monoxide or smoke sensors must be installed near the center of the entry, as near the roof as feasible in a location that would not expose personnel working on the system to unsafe conditions. Sensors must not be located in abnormally high areas or in other locations where air flow patterns do not permit products of combustion to be carried to the sensors.

(3) Methane sensors must be installed near the center of the entry, at least 12 inches from the roof, ribs, and floor, in a location that would not expose personnel working on the system to unsafe conditions.

(e) *Location of sensors—belt air course.* In addition to the requirements of paragraph (d) of this section, any AMS used to monitor belt air courses under § 75.350(b) must have sensors to monitor for carbon monoxide or smoke located:

(1) At or near the working section belt tailpiece in the air stream ventilating the belt entry. In longwall mining systems the sensor must be located upwind in the belt entry at a distance no greater than 150 feet from the mixing point where intake air is mixed with the belt air at or near the tailpiece;

(2) Upwind, a distance no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses;

(3) At intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. In areas along each belt entry where air velocities are less than 50 feet per minute, the sensor spacing must not exceed 350 feet;

(4) Not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. If the belt drive, tailpiece, and/or take-up are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component; and

(5) At other locations in any entry that is part of the belt air course as required and specified in the ventilation plan.

(f) *Locations of sensors—the primary escapeway.* If used to monitor the primary escapeway under § 75.350(b)(4), carbon monoxide or smoke sensors must be located in the primary escapeway within 500 feet of the working section and within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel.

(g) *Location of sensors—return air splits.* (1) If used to monitor return air splits under § 75.362(f), a methane sensor must be installed in the return split of air between the last working place, or longwall or shortwall face, ventilated by that split of air and the junction of the return air split with another air split, seal, or worked out area.

(2) If used to monitor a return air split under § 75.323(d)(1)(ii), the methane sensors must be installed at the following locations:

(i) In the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point; and

(ii) Immediately upwind from the location where the return air split meets another split of air or immediately upwind of the location where a split of air is used to ventilate seals or worked-out areas.

(h) *Location of sensors—electrical installations.* When monitoring the intake air ventilating underground transformer stations, battery charging stations, substations, rectifiers, or water pumps under § 75.340(a)(1)(ii) or § 75.340(a)(2)(ii), at least one sensor must be installed to monitor the mine atmosphere for carbon monoxide or smoke, located downwind and not greater than 50 feet from the electrical installation being monitored.

(i) *Establishing alert and alarm levels.* An AMS installed in accordance with the following sections must initiate alert and alarm signals at the specified levels, as indicated:

(1) For § 75.323(d)(1)(ii) alarm at no more than 1.5% methane.

(2) For §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c), alert at 5 ppm carbon monoxide above the ambient level and alarm at 10 ppm carbon monoxide above the ambient level when carbon monoxide sensors are used; and alarm at a smoke optical density of 0.022 per meter when smoke sensors are used. Reduced alert and alarm settings approved by the district manager may be required for carbon monoxide sensors identified in the mine ventilation plan, § 75.371(mm).

(3) For § 75.362(f), alert at no more than 1.0% methane and alarm at no more than 1.5% methane.

(j) *Establishing carbon monoxide ambient levels.* Carbon monoxide ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for monitors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c).

(k) *Installation and maintenance.* An AMS installed in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) must be installed and maintained by personnel trained in the installation and maintenance of the system. The system must be maintained in proper operating condition.

(l) *Sensors.* Sensors used to monitor for carbon monoxide, methane, and smoke must be either of a type listed and installed in accordance with the recommendations of a nationally recognized testing laboratory approved by the Secretary; or these sensors must be of a type, and installed in a manner, approved by the Secretary.

(m) *Time delays.* When a demonstrated need exists, time delays may be incorporated into the AMS. These time delays must only be used to account for non-fire related carbon monoxide sensor signals. The use and length of any time delays, or other techniques or methods which eliminate or reduce the need for time delays, must be specified and approved in the mine ventilation plan. These time delays are limited to no more than three minutes.

(n) *Examination, testing, and calibration.* (1) At least once each shift when belts are operated as part of a production shift, sensors used to detect carbon monoxide or smoke in accordance with § 75.350(b) and alarms installed in accordance with § 75.350(b) must be visually examined.

(2) At least once every seven days, alarms for AMS installed in accordance with §§ 75.350(b) and 75.350(c) must be functionally tested for proper operation.

(3) At intervals not to exceed 31 days—

(i) Each carbon monoxide sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done

with a known concentration of carbon monoxide in air sufficient to activate the alarm;

(ii) Each smoke sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) must be functionally tested in accordance with the manufacturer's calibration specifications;

(iii) Each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done with a known concentration of methane in air sufficient to activate an alarm.

(4) Gases used for the testing and calibration of AMS sensors must be traceable to the National Institute of Standards and Technology reference standard for the specific gas. When these reference standards are not available for a specific gas, calibration gases must be traceable to an analytical standard which is prepared using a method traceable to the National Institute of Standards and Technology. Calibration gases must be within ±2.0 percent of the indicated gas concentration.

(o) *Recordkeeping.* (1) When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), responsible persons designated by the operator must make the following records by the end of the shift in which the following event(s) occur:

(i) If an alert or alarm signal occurs, a record of the date, time, location and type of sensor, and the cause for the activation.

(ii) If an AMS malfunctions, a record of the date, the extent and cause of the malfunction, and the corrective action taken to return the system to proper operation.

(iii) A record of the seven-day test of alert and alarm signals, calibrations, and maintenance performed on the system must be made by the person(s) performing the test, calibration, or maintenance.

(2) The person entering the record must include their name, title, date, and signature in the record.

(3) The records required by this section must be kept in a secure book that is not susceptible to alteration, or must be kept electronically in a computer system that is secure and not susceptible to alteration. These records must be maintained separately from other records and identifiable by a title, such as the ''AMS log.''

(p) *Retention period.* Records must be retained for at least one year at a surface location at the mine and made available for inspection by miners and authorized representatives of the Secretary.

(q) *Training.* All AMS operators must be trained annually in the proper operation of the AMS. A record of the content of training, the person conducting the training, and the date the training was conducted, must be maintained at the mine for at least one year by the mine operator.

(r) *Communications.* When an AMS is used to comply with § 75.350(b), a two-way voice communication system, as required by paragraph (b)(1) of this section, must be installed in a different entry that is separate from the AMS.

5. Revise § 75.352 to read as follows:

§ 75.352 Actions in response to AMS malfunction, alert, or alarm signals.

(a) The designated AMS operator or other designated responsible person must promptly initiate the following actions:

(1) When a malfunction or alert signal is given, notify appropriate personnel, immediately begin an examination to determine the cause, and take required action to address it, and

(2) When an alarm is given, notify appropriate personnel, including miners in affected working sections, in areas where mechanized mining equipment is being installed or removed, and in other locations specified in the approved program of instruction as set forth in § 75.1502.

(b) If contaminant concentration levels for any carbon monoxide, smoke, or equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) exceed the specified alert or alarm level, the following procedures must be followed unless the cause of the alert or alarm signal is known not to be a hazard to the miners:

(1) When an alert signal is given, the sensor activated must be identified and an examination must begin immediately to determine the cause of the alert signal.

(2) When an alarm is given, the sensor that is activated must be identified, and the fire fighting and evacuation procedures initiated as required by the approved program of instruction (§ 75.1502). At a minimum, all personnel in the affected area, unless assigned other duties in the approved program of instruction (§ 75.1502), must be promptly evacuated outby the next functioning sensor upwind of the alarming sensor.

(c) If an alert or alarm signal from a methane sensor in a return air split is activated, the sensor producing the alert or alarm signal must be identified, an examination must be made to determine the cause of the activation, and the actions required under § 75.323 must be taken.

(d) If any fire detection components of the AMS malfunction or are inoperative, immediate action must be taken to return the system to proper operation. During the time that AMS component repairs are being made, operation of the belt may continue if the following conditions are met:

(1) If one AMS sensor becomes inoperative, a trained person must continuously monitor for carbon monoxide or smoke at the inoperative sensor.

(2) If two or more adjacent AMS sensors become inoperative, a trained person(s) must patrol and continuously monitor for carbon monoxide or smoke in the affected area so that the affected area will be traveled each hour, or a trained person must be stationed to monitor at each inoperative sensor.

(3) If the complete system becomes inoperative, trained persons must patrol and continuously monitor for carbon monoxide or smoke so that the affected belt entries are traveled each hour in their entirety.

(4) The trained person(s) monitoring under this section must, as a minimum, have two-way voice communication capabilities with the AMS operator at intervals not to exceed 2,000 feet.

(5) The trained persons monitoring under this section must report the concentrations detected at the affected AMS sensor(s) at intervals not to exceed one hour. In addition, the trained person must report as soon as possible to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm level specified in paragraph (d)(7) of this section, unless the source of the contaminant is known not to represent a hazard.

(6) Instruments used to monitor under this section must have a level of detectability equal to that required of the sensors in § 75.351(l).

(7) For those AMSs using sensors other than carbon monoxide sensors, an alternate detector and the alert and alarm levels associated with that detector must be specified and approved in the ventilation plan.

(e) If the 50-foot per minute minimum air velocity is not maintained when required in § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. Trained persons must patrol and continuously monitor for carbon monoxide or smoke as set forth in paragraphs (d)(1) through (7) of this

section, so that all portions of the affected belt entry(ies) are examined once each hour.

6. Redesignate § 75.371 (ii) through (pp) as paragraphs (oo) through (vv), respectively, and add new paragraphs (ii) through (nn) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(ii) The locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections or areas where mechanized mining equipment is being installed or removed, § 75.350(b)(3).

(jj) The locations of point-feed regulators, § 75.350(c)(5).

(kk) The location of any additional carbon monoxide or smoke sensor installed in the belt air course, § 75.351(e)(5).

(ll) The length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from carbon monoxide sensors, § 75.351(m).

(mm) The lower alert and alarm settings for carbon monoxide sensors, § 75.351(i)(2).

(nn) The alternate detector and the alert and alarm levels associated with the detector, § 75.352(d)(7).

* * * * *

7. Amend § 75.372 by revising paragraph (b)(16) to read as follows:

§ 75.372 Mine ventilation map.

* * * * *

(b) * * *

(16) The locations and type of all AMS sensors required by this part.

* * * * *

8. Amend § 75.380, by revising paragraph (g) to read as follows:

§ 75.380 Escapeway; bituminous and lignite mines.

* * * * *

(g) Except where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and except as provided in § 75.350(c), the primary escapeway must be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the ventilation plan and does not pose a hazard to miners.

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Monday,
January 27, 2003

Part III

Federal Election Commission

11 CFR Parts 100, et al.

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates; Interim Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 104, 110, 116, 400, and 9035

[Notice 2003—3]

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates

AGENCY: Federal Election Commission.

ACTION: Interim final rules.

SUMMARY: The Federal Election Commission (''FEC'' or ''Commission'') is adopting, as interim final rules, new regulations relating to increased contribution limits for individuals when contributing to candidates who are facing self-financed candidates under the Federal Election Campaign Act of 1971 (''FECA'' or the ''Act''), as amended by the Bipartisan Campaign Reform Act of 2002 (''BCRA''). The so-called ''Millionaires' Amendment'' in BCRA raises the individual contribution limits for candidates for the Senate and House of Representatives depending on the amount that opposing candidates expend from personal funds in connection with an election. BCRA also removes the limitations on national and State party committee expenditures on behalf of a candidate if the opposing candidate's expenditures from personal funds exceed a threshold amount. These interim final rules implement the various provisions of the Millionaires' Amendment including thresholds, computation formulas, increased contribution limits with overall caps, repayment of personal loans, and reporting requirements.

The Commission is promulgating these rules on an interim final basis. The Commission is soliciting comments on all aspects of the interim final rules and may amend the interim rules as appropriate in response to comments received. Further information is contained in the Supplementary Information that follows.

DATES: The interim final rules are effective on February 26, 2003. Comments must be received on or before March 28, 2003. If the Commission receives sufficient requests to testify, it may hold a hearing on these interim final rules. If the Commission decides to hold a hearing, it will announce the date after the end of the comment period. Persons wishing to testify at a hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *millionaire@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Robert M. Knop, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002), Congress made extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.* This is one of a series of rulemaking notices the Commission has published over the past several months in order to meet the rulemaking deadlines set out in BCRA. The Commission adopted these interim final rules on December 19, 2002.

These interim final rules address the so-called ''Millionaires' Amendment'' to BCRA. Section 304 of BCRA adds a new paragraph (i) to 2 U.S.C. 441a, which addresses Senate elections. Section 319 of BCRA adds a new section 441a–1 to the FECA, which addresses elections for the House of Representatives. The Senate provisions also add new notification or reporting requirements in 2 U.S.C. 434. Collectively, these provisions address elections in which a candidate for the Senate or the House of Representatives faces an opponent who is spending significant amounts of his or her personal funds on the race. It is important to note that the increased contribution and coordinated party expenditure limitations available to candidates opposing self-financed candidates under the Millionaires' Amendment apply *only* to candidates running for the Senate or the House of Representatives and do *not* apply to candidates running for President or Vice-President. These interim final rules also address a provision of BCRA limiting how a candidate may repay a loan he or she has made to his or her campaign. 2 U.S.C. 441a(j).

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The interim final rules on Increased Contribution Limits for Candidates Opposing Self-financed Candidates were transmitted to Congress on January 17, 2003.

Explanation and Justification

As of January 1, 2003, the Act, as amended by BCRA, limits the amount that a person, other than a multicandidate political committee, may contribute to a candidate to $2,000 per election, which is indexed for inflation. 2 U.S.C. 441a(a)(1)(A). Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during a 2-year period. 2 U.S.C. 441a(a)(3)(A). The Act also limits the amounts of coordinated expenditures by national and State political party committees (including subordinate committees) made in connection with the general election campaign of a candidate. 2 U.S.C. 441a(d)(3).

The Millionaires' Amendment raises contribution limits on contributions received by a candidate for the Senate or the House of Representatives who is facing a ''self-financed'' opponent, that is, an opponent who spends significant amounts of his or her personal funds on the race. As the opponent's spending from personal funds reaches certain prescribed levels, the candidate is granted limited relief from certain contribution limits and party spending limits.[1] First, when the spending of personal wealth by the opponent reaches certain thresholds (and other conditions are met), the candidate may accept contributions from individuals under increased contribution limits. Second, national and State political party committees may make unlimited coordinated party expenditures on behalf of the candidate under 2 U.S.C.

[1] ''Candidate'' is used in this document to mean that candidate who is facing an ''opponent,'' or ''opposing candidate,'' whose expenditures from personal funds are sizeable.

441a(d)(3). These increased contribution and coordinated expenditure limits are in effect only when certain specific conditions are met, and are rescinded if other contingencies occur.

The Millionaires' Amendment establishes a ''threshold amount'' for each election. For House of Representatives races, the threshold amount is a set amount, $350,000. 2 U.S.C. 441a–1(a)(1). For Senate races, the threshold amount varies, according to a formula driven by the ''voting age population'' of the State. 2 U.S.C. 441a(i)(1)(B).

The Millionaires' Amendment measures the opponent's expenditure of personal funds relative to the candidate's expenditures from personal funds. BCRA defines two new terms, ''personal funds'' and ''opposition personal funds amount.'' 2 U.S.C. 431(26); 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). For both Senate elections and House of Representatives elections, the opposition personal funds amount is the difference between the opponent's expenditures from personal funds and the candidate's expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the acceptance of contributions under increased limits, as well as the lifting of the coordinated spending limits, in a situation where a candidate's own expenditures from personal funds offset the opponent's expenditures from personal funds.

The calculation of the opposition personal funds amount also takes into account any fundraising advantage the candidate may have which negates the advantage the opponent gains from his or her expenditures from personal funds. This ''gross receipts advantage'' is another check on the operation of the Millionaires'' Amendment, accounting for the situation where a candidate's advantage in ''ordinary'' fundraising may offset the expenditures from personal funds by the opponent. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives).

In Senate elections, when the opposition personal funds amount reaches certain multiples of the threshold amount, the candidate may accept increased contributions according to a tiered schedule. The first such multiple is twice the threshold amount. When the opposition personal funds amount reaches twice the threshold amount, the contribution limit for individuals is tripled. 2 U.S.C. 441a(i)(1)(C)(i)(I). A contribution accepted under this increased contribution limit does not count against the individual's aggregate contribution limit under 2 U.S.C. 441a(a)(3). 2 U.S.C. 441a(i)(1)(C)(i)(II). The contribution limits also increase at multiples of four times and ten times the threshold amount. When the opposition personal funds amount reaches four times the threshold amount, the contribution limit for individuals is raised six-fold. When the opposition personal funds amount reaches ten times the threshold amount, the contribution limit for individuals is raised six-fold and the Act's limits on coordinated political party expenditures on behalf of the candidate are lifted. 2 U.S.C. 441a(i)(1)(C)(iii)(III).

In House of Representatives elections, if the opposition personal funds amount reaches the threshold amount, the individual contribution limits are tripled, such increased contributions do not count against the section 441a(a)(3) individual aggregate contribution limits, and the coordinated political party expenditures limits in section 441a(d)(3) are lifted. 2 U.S.C. 441a–1(a)(1)(A) through (C). Note that for House of Representatives candidates, unlike Senate candidates, the limits are raised or lifted all at once, and not in increments.

For both Senate and House of Representatives candidates, the operation of the increased contribution limits and the suspension of the limit on coordinated political party expenditures are subject to an on-going check in the form of the so-called ''proportionality provision.'' *See* 147 CR S2538 (daily ed. March 20, 2001) (Sen. DeWine). If the sum of the contributions accepted under the increased limits plus the coordinated party expenditures made by political party committees under the increased limits exceeds 110% of the opposition personal funds amount in a Senate election or 100% of the opposition personal funds amount in a House of Representatives election, then the contribution limits revert to the original amount, and the political party expenditure limits also revert to their original amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). Thus, the Millionaires' Amendment does not permit those candidates facing wealthy self-financed opponents to raise individual contributions significantly in excess of the amount of personal funds wealthy opponents actually spend on their own elections.

The increased contribution limits are also terminated if the self-financed opponent withdraws from the race. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a–1(a)(3)(B) (House of Representatives). Additionally, both the Senate and House of Representatives versions of the Millionaires' Amendment prescribe rules for disposing of ''excess contributions'' received under the increased contribution limits. 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a–1(b) (House of Representatives).

Part 100—Definitions

1. 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define ''file, filed, and filing.'' The rule in current paragraph (b) states that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The final rule adds paragraph (g), discussed below, to the list of reports not subject to the rule in paragraph (b). Thus, paragraph (b) notes that this rule does not apply to reports described in 11 CFR 100.19(c) through (g) which are electronic filings, 48-hour and 24-hour reports of independent expenditures, 48-hour notices of last-minute contributions, electioneering communication statements, and notifications of expenditures from personal funds, respectively.

New paragraph (g) states that notifications of self-financed candidates' expenditures from personal funds, required under 11 CFR part 400, are considered timely filed by Senate candidates' principal campaign committees only if they are faxed or e-mailed to the Commission and faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement. As discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.21, 400.22, and 400.24), Senate candidates' principal campaign committees are required to file their original notifications with the Secretary of the Senate and copies of their notifications with the Commission and each opposing candidate. Notifications by House of Representatives candidates' principal campaign committees are considered timely filed only when they are both electronically filed (if required under 11 CFR 104.18, 400.20, and 400.23) with the Commission and when they are faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds defined in 11

CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement.

2. 11 CFR 100.33 Definition of ''Personal Funds'' (2 U.S.C. 431(26))

The definition of ''personal funds'' in new section 100.33 largely tracks the definition provided in BCRA (2 U.S.C. 431(26)), which, in turn, appears to be based primarily on the definition of ''personal funds'' in former 11 CFR 110.10(b). Because BCRA placed the new statutory definition of ''personal funds'' in 2 U.S.C. 431, giving it general applicability in FECA, the Commission has decided to place the corresponding regulatory definition in 11 CFR part 100 to give general applicability to the definition in all of the Commission's regulations relating to Title 2 of the United States Code. Therefore, the version of the definition in 11 CFR 110.10(b) is deleted. The Commission notes that the regulations relating to Title 26 of the United States Code also contain a definition of ''personal funds'' at 11 CFR 9003.2(c)(3). The definition of ''personal funds'' in 11 CFR 9003.2(c)(3) is not being changed. Only the definition of ''personal funds'' in former 11 CFR 110.10(b) is being altered in conformance with the definition of ''personal funds'' in BCRA.

Although the new statutory definition of ''personal funds'' seems to be based largely on the previous definition contained in former 11 CFR 110.10(b), it differs from that prior rule in a number of respects. First, although both definitions include salary and income from *bona fide* employment, BCRA considers only salary and earned income received during the current election cycle (as defined in new 11 CFR 400.2, discussed below) to be the candidate's personal funds. Second, while both definitions include income from trusts established before and after certain points in time, the relevant date in BCRA is the beginning of the election cycle (again, as defined in new 11 CFR 400.2) whereas in former 11 CFR 110.10(b) the relevant date is the point at which an individual becomes a candidate for Federal office.

A third difference between the definition of ''personal funds'' in BCRA and former § 110.10(b) involves the receipt of gifts by the candidate. While both definitions include gifts of a personal nature that had been customarily received by the candidate before a certain point in time, BCRA counts only those that had been customarily received prior to the beginning of the election cycle (*see* Explanation and Justification for new 11 CFR 400.2, below) whereas former 11 CFR 110.10(b) counted those that had been customarily received prior to candidacy.

Part 101—Candidate Status and Designations

11 CFR 101.1 Candidate Designations (2 U.S.C. 432(e)(1))

Currently, § 101.1(a) requires Statements of Candidacy (FEC Form 2) to be filed with the Commission or with the Secretary of the Senate, as appropriate under 11 CFR part 105, within 15 days of the time an individual becomes a candidate. Since this is the same time in which a candidate will be required to file a Declaration of Intent under new section 11 CFR 400.20 (*see* Explanation and Justification for new 11 CFR 400.20, below), the Commission has decided to add the information required in the Declaration of Intent to FEC Form 2.

We note that current sections of 11 CFR 101.1(a) and 105.2 require Senate candidates to file their Statements of Candidacy with the Secretary of the Senate. This requirement will not change under the Commission's interim final rules. However, in the interest of rapid notification to the Commission and to each opposing candidate, new 11 CFR 400.20(b)(1) will require Senate candidates to fax or electronically mail a *copy* of their Statement of Candidacy to the Commission. Further, both Senate and House of Representatives candidates will be required to send a fax or an electronic mail message to each opposing candidate that either attaches their FEC Form 2 or contains the information required by 11 CFR 400.23 (*see* Explanation and Justification for new 11 CFR 400.23, below).

Part 102—Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

11 CFR 102.2 Statement of Organization: Forms and Committee Identification Number (2 U.S.C. 433(b), (c))

New 11 CFR 102.2(a)(1)(viii) requires the principal campaign committee of each Senate and House of Representatives candidate to provide either an electronic mail address or a facsimile number, for the purpose of receiving Declarations of Intent and Notifications of Expenditures from Personal Funds from other candidates in the same election as required by subpart B of part 400. This requirement is intended to facilitate the notification of expenditures from personal funds under part 400. Use of facsimile machines or electronic mail will provide candidates' principal campaign committees nearly instantaneous notification. The Commission recognizes that not all principal campaign committees may have a facsimile machine, an electronic mail address, or even a computer system. However, the Commission notes that most public libraries have computers available for free public use and several Web sites provide free access to electronic mail. Thus, the Commission concludes that this requirement will at most create only a minimal burden on some candidates, and to whatever extent it might do so is outweighed by the overall benefits.

Part 104—Reports by Political Committees (2 U.S.C. 434)

11 CFR 104.19 Special Reporting Requirements for Principal Campaign Committees of Candidates for Election to the United States Senate or United States House of Representatives

The definition of ''opposition personal funds amount'' in new 11 CFR 400.10 includes the computation for ''gross receipts advantage,'' as defined in 2 U.S.C. 441a(i)(1)(E) (Senate) and 441a–1(a)(2)(B) (House of Representatives). *See* below for discussion and explanation and justification of these definitions. To compute the ''gross receipt advantage,'' candidates must know of the gross receipts of each of their opposing candidates during any election cycle that may be expended in connection with the election where they are running against a self-financed candidate. The ''gross receipts advantage'' also takes into account amounts that candidates contribute to their own campaign by subtracting that amount from the gross receipts their authorized committees received.

Because the former regulations and the reporting forms did not require candidates' authorized committees to report the information necessary to compute ''gross receipts advantage'' in a concise and comprehensive manner, the Commission is adding a new section, 11 CFR 104.19, to require supplemental reporting by the principal campaign committees of candidates who are seeking election to the U.S. Senate or U.S. House of Representatives. This ensures that the candidates in the same election have sufficient and timely information to do the necessary computations under 11 CFR part 400.

Paragraph (a) limits the scope of this new section to only these candidates. It also provides that the reports required under this section must be filed with the Commission. Paragraph (b) describes when these reports must be filed and the content required. Paragraph (b)(1)

requires principal campaign committees to file by July 15 of the year before the general election of the office sought that discloses the gross receipts available to the candidates and their authorized committees to expend in connection with the primary election and the general election as determined on June 30 of that year. The gross receipts amounts must include the contributions that have been designated, deemed to be designated, or redesignated for both the primary election and the general election. Principal campaign committees must report the amount of contributions from personal funds of their candidates received by any of the candidates' authorized committees by June 30 that have been designated for the primary election and the general election. They must then subtract the contributions from personal funds that have been designated for the primary election from the gross receipts that may be expended in connection with the primary election and disclose that amount. Likewise, they must also compute and disclose the amount for the general election.

Paragraph (b)(2) requires that principal campaign committees file another report on January 31 of the year of the general election of the office sought. This paragraph is similar to paragraph (b)(1) except that the pertinent date is December 31 of the year preceding the relevant general election. Principal campaign committees must disclose the same information under paragraph (b)(2) as in paragraph (b)(1) but instead of reporting the amount determined as of June 30, this amount is determined as of December 31.

While BCRA mandates that the opposition personal funds amount use the amounts determined for June 30 and December 31, the interim final rules set the deadlines for the reports at July 15 and January 31, respectively, to coincide with the filing deadlines of the second quarterly reports and the year-end reports that all authorized committees are required to file. The Commission seeks comment whether these are appropriate deadlines.

Part 110—Contribution and Expenditure Limitations and Prohibitions

1. 11 CFR 110.1 Conforming Amendment to 11 CFR 110.1(b)(3) Regarding Net Debts Outstanding (2 U.S.C. 441a(j))

Current 11 CFR 110.1(b)(3) restricts the ability of candidates and their authorized committees to accept contributions after the election. It states that they can accept contributions up to the amount of their ''net debts outstanding.'' ''Net debts outstanding'' is defined in current 11 CFR 110.1(b)(3)(ii). In order to conform with the fundraising restrictions in new 11 CFR 116.11 (*see* Explanation and Justification for new 11 CFR 116.11, below), new paragraph (b)(3)(ii)(C) would be added to current 11 CFR 110.1 to exclude the amount of personal loans that exceed $250,000 from the definition of ''net debts outstanding.''

2. 11 CFR 110.10 Deletion of Former 11 CFR 110.10(b) Definition of ''Personal Funds''

As explained in greater detail above (*see* Explanation and Justification for new 11 CFR 100.33), the Commission is implementing BCRA's new definition of ''personal funds.'' The Commission has decided to locate this new definition in new 11 CFR 100.33. Accordingly, the Commission is deleting the former definition of ''personal funds'' in former 11 CFR 110.10(b).

Part 116—Debts Owed by Candidates and Political Committees

BCRA added a new subsection (j) to 2 U.S.C. 441a, which restricts the ability of candidates and their authorized committees to raise funds after the election to repay loans that the candidates made to their authorized committees. These loans are referred to as ''personal loans.'' Section 441a(j) of FECA states that:

> Any candidate who incurs personal loans after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

Although 2 U.S.C. 441a(j) is part of the Millionaires' Amendment, the provision has wider application than the other provisions of the Millionaires' Amendment because it is placed as a separate subsection within 2 U.S.C. 441a. This statutory provision thus applies to all personal loans from candidates to their authorized committees regardless of whether the increased contribution and party spending limits in 2 U.S.C. 441a(i) or 441a–1 apply. BCRA's amendment to 2 U.S.C. 441a regarding candidate loans also applies to presidential candidates, who may be self-financed, or who may be permitted under the public funding regime to make limited expenditures from personal funds for their campaigns. Therefore, the interim final rules add new section 11 CFR 116.11—*Debts Owed by Candidates or Political Committees* rather than include new rules implementing 2 U.S.C. 441a(j) in 11 CFR part 400 with the other Millionaires' Amendment regulations. The interim final rules also include a conforming amendment to 11 CFR 110.1(b)(3) regarding net debts outstanding, *see* above.

1. 11 CFR 116.11 Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding $250,000 Made by the Candidate to the Authorized Committee

A. Interim Final Rule

According to the sponsors of the Millionaires' Amendment, the purpose of 2 U.S.C. 441a(j) is to restrict the amount of money candidates and their authorized committees can raise after the election to repay the candidates for personal loans.[2] Essentially, authorized committees may only use up to $250,000 of contributions made after the election to repay the candidates. New 11 CFR 116.11 sets forth these restrictions.

The interim final rules define ''personal loans'' in paragraph (a) of 11 CFR 116.11. The definition includes not only loans made by candidates to their authorized committees, but also loans made by other persons to the authorized committees that are endorsed or guaranteed by the candidate or that are secured by the personal funds of the candidate. This definition ensures that loans to authorized committees that are used in connection with the candidate's campaign for election, for which the candidate is personally liable, are subject to the provisions of 11 CFR 116.11. It is important to note that new 11 CFR 116.11 applies to all loans made, endorsed, or guaranteed by candidates regardless of whether the other provisions of the Millionaires' Amendment are triggered, *i.e.,* the increased contribution limits.

The definition of ''personal loans'' in paragraph (a) specifies that advances made by the candidate to their authorized committees are personal loans subject to the repayment restrictions in 11 CFR 116.11. The Commission seeks comment on whether the interim final rules should specify within this definition of ''personal loans'' other debts and obligations that

[2] ''This (amendment) limits candidates who incur personal loans in connection with their campaign in excess of $250,000. They can do $250,000 and then reimburse themselves with fundraisers. But anything more than that, they cannot repay it by going out and having fundraisers once they are elected with their own money.'' 147 CR S2451 (daily ed. Mar. 19, 2001) (statement of Sen. Domenici).

the candidate's authorized committee owes to the candidate.

The introductory text in paragraph (b) makes clear that if a candidate makes several personal loans over the course of an election, those loans will not be treated separately for purposes of this section but will, instead, be considered in the aggregate. Paragraphs (b) and (d) treat a primary election as a separate election from a general election. If a candidate makes several personal loans to the authorized committee, all the loans will be added together to determine whether they exceed $250,000 and are, therefore, subject to the provisions of this section.

Under paragraph (b)(1), authorized committees may repay the entire amount of any personal loans from contributions that are made *on the date of the election or before that date.* Repayment of the entire loan amount is permitted under BCRA and FECA even if the total loan amount exceeds $250,000 and as long as these contributions were made on or before the date of the election.

In contrast, paragraphs (b)(2) and (3) both address repayments using contributions made after the election. Paragraph (b)(2) allows authorized committees to use only $250,000 of contributions that are made after the election to repay the candidate's personal loans to his or her campaign committee. Consequently, paragraph (b)(3) prohibits authorized committees from using more than $250,000 of contributions that are made after the election to repay the candidate for personal loans.

It is important to note that 11 CFR 116.11(b)(1), (b)(2), and (b)(3) are not mutually exclusive. Under the interim final rules, authorized committees may use contributions that are made *before* the election to repay candidate loans in any amount, and contributions made *after* the election to repay candidate loans up to $250,000. For example, Candidate A loans $600,000 to her authorized committee. The authorized committee receives $350,000 in contributions by election day and receives an additional $400,000 in contributions after the election. Candidate A's authorized committee may use $250,000 of the $400,000 received after the election and $350,000 received before the election to repay the entire amount of the candidate's personal loan.

Paragraph (c) of new 11 CFR 116.11 outlines certain conditions regarding the repayment of candidates' personal loans after the election. Paragraph (c)(1) establishes a post-election time limit for the use of remaining cash on hand for the repayment of personal loans. If a candidate's authorized committee wishes to use the cash on hand as of the day after the election to repay any portion of the candidate's personal loan(s), it must repay the personal loan(s) within 20 days of the election, which is the close of books for the post-general election report. After the 20-day post-election time period has elapsed, paragraph (c)(2) requires a candidate's authorized committee to treat the remaining balance of the candidate's personal loan that exceeds $250,000 as a contribution from the candidate to the authorized committee, given that this amount could never be repaid, and given that the amount must be accounted for on the authorized committee's next report.

Further, paragraph (c)(3) requires the candidate's authorized committee to report both the amount of cash on hand used to repay the candidate's personal loan(s) (under paragraph (c)(1)) and the treatment of the remaining loan amount as a contribution from the candidate (under paragraph (c)(2)) in the authorized committee's next scheduled report.

Example: Candidate X loans $500,000 to her campaign on October 1 for the general election. As of the day after the general election, Candidate X's authorized committee has cash on hand from the general election in the amount of $100,000. Candidate X's authorized committee decides to use $50,000 of the cash on hand to repay part of the candidate's personal loan, leaving an outstanding balance of $450,000. Candidate X's authorized committee must repay $50,000 of the personal loan and must treat $200,000 as a contribution from the candidate within 20 days of the general election because that is the amount that exceeds $250,000 of the remaining balance. Candidate X's authorized committee must report the repayment of $50,000 of the personal loan and the treatment of $200,000 of the personal loan's outstanding balance as a contribution on the next regularly scheduled report, the post-general election report.

BCRA specifically states that 2 U.S.C. 441a(j) applies only to personal loans that are made after November 6, 2002. Thus, the limitations on repayment of personal loans from contributions made after the respective election do not apply to personal loans made before this date. Consequently, any outstanding loan balances of candidate loans that were made before November 6, 2002, may be repaid with contributions made after this date subject to the provisions concerning net debts outstanding in 11 CFR 110.1(b)(3).

B. Alternative Interpretation of 2 U.S.C. 441a(j)

The definition of ''personal loans'' in new 11 CFR 116.11(a) is based on a broad interpretation of the opening phrase ''[a]ny candidate who incurs personal loans'' in 2 U.S.C. 441a(j) to mean loans made by candidates to their authorized committees. This interpretation is based on the legislative history of the Senate debates on this provision.[3]

The Commission, however, seeks comments on its interpretation of ''incurs'' in 2 U.S.C. 441a(j). ''Incur'' means ''[t]o become liable or subject to * * * and to become through one's own action liable or subject to.'' [4] In the opening phrase of 2 U.S.C. 441a(j), it is the candidate who is ''incurring'' the personal loans. Thus, arguably, the use of ''incurs'' could refer to the candidate's liability and not the authorized committee's liability to the candidate. The interim final rules reject this interpretation of 2 U.S.C. 441a(j) to mean loans that are made *to* candidates rather than loans made *by* candidates for two reasons. First, the legislative history supports a different interpretation. Second, the practical consequence of interpreting 2 U.S.C. 441a(j) to apply to loans made *to* candidates rather than loans made *by* candidates to their authorized committee would be that similarly situated candidates may be treated differently. Under this interpretation, a candidate who takes out a loan from a lending institution and then lends the loan proceeds to his or her authorized committee would be subject to the restrictions of 2 U.S.C. 441a(j) and 11 CFR 116.11. Conversely, a candidate who liquidates an asset and loans the proceeds from the sale to his or her authorized committee would not be subject to these sections and the candidate's authorized committee would be able to raise funds after the election to repay him or her. For these two reasons, the Commission rejects this possible interpretation of 2 U.S.C. 441a(j) at this time.

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[3] ''If you incur debt from a personal loan and then you get elected as Senator, and then you go around and say, now I am Senator, I want you to get my money so I can pay back what I used of my own money to run for election. It is clear in this amendment that you cannot do that in the future.'' 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); ''[The] language [of 2 U.S.C. 441a(j)] makes it clear there will not be any effort after the election to raise money to repay those loans; * * *'' *Id.* at S2462 (daily ed. Mar. 19, 2001) (statement of Sen. Durbin); *see also* footnote 2, above.

[4] *Black's Law Dictionary* 108 (6th ed. 1990).

2. 11 CFR 116.12 Repayment of Candidate Loans of $250,000 or Less

In a recent BCRA-related rulemaking, the Commission deleted 11 CFR 113.2(d) from the regulations. ''Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds: Final Rules and Explanation and Justification,'' 67 FR 76962 (December 13, 2002). That now-deleted paragraph addressed, among other things, the repayment of candidate loans using campaign funds. In the Explanation and Justification, the Commission noted that it would return to the issue of repayment of candidate loans in the Millionaires' Amendment rulemaking, if necessary. 67 FR at 76975. The Commission has decided to address this issue in 11 CFR 116.11 and 116.12 as part of this rulemaking, rather than in part 113, because part 116 specifically implements statutory changes directly affecting the repayment of candidate loans (*i.e.*, 2 U.S.C. 441a(j)).

Whereas 11 CFR 116.11 outlines the requirements regarding the repayment of candidate's personal loans that, in the aggregate, exceed $250,000, new 11 CFR 116.12 contains requirements regarding the repayment of candidate's personal loans that, in the aggregate, are equal to or less than $250,000. Paragraph (a) of 11 CFR 116.12, states that a candidate's authorized committee may repay up to $250,000 of a candidate's personal loans using contributions to the candidate or the candidate's authorized committee made any time before, on, or after the date of the election as long as the personal loans were used in connection with the candidate's campaign for election. BCRA places no temporal limit on the contributions that may be used to repay personal loans of $250,000 or less, so paragraph (a) permits candidate's authorized committees to use contributions received before, during, or after the election for this purpose.

Paragraph (b) of 11 CFR 116.12 states that this section applies separately to each election. This means that, if a candidate were to make a personal loan or loans in connection with more than one election, his or her authorized committee may repay up to $250,000 of the aggregate loan amount for each election. For example, Candidate X makes a $250,000 personal loan to her campaign for the primary election and a $250,000 personal loan to her campaign committee for the general election. As of the date after the general election, Candidate X has $500,000 in aggregate outstanding personal loans made to her authorized committee for the primary and general elections. Candidate X's authorized committee may use contributions received before, during, or after the primary election to repay Candidate X's $500,000 outstanding personal loan balance, $250,000 for the primary election loan and $250,000 for the general election loan.

Paragraph (c) states that nothing in 11 CFR 116.12 shall supercede 11 CFR 9035.2 regarding the limitations on expenditures from personal funds or family funds of a presidential candidate who accepts matching funds. Presidential primary candidates must still comply with the limit on expenditures from personal funds exceeding $50,000 prescribed by 11 CFR 9035.2 and 2 U.S.C. 9035.

Part 400—Increased Limits for Candidates Opposing Self-financed Candidates

Scope and Definitions

1. 11 CFR 400.1 Scope and Effective Date

The Commission is promulgating new rules implementing the Millionaires' Amendment. These rules are in new part 400 of Title 11 of the Code of Federal Regulations.

Paragraph (a) of new 11 CFR 400.1 introduces the scope of the part, which is elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted an increased contribution limit in response to certain expenditures from personal funds by an opposing candidate. Paragraph (a) also states expressly that part 400 does not apply to presidential and vice-presidential elections. Paragraph (b) of 11 CFR 400.1 specifies the effective date of part 400, February 26, 2003, and makes the important clarification that part 400 will not apply to any runoff elections, recounts, or election contests resulting from elections prior to that date. Pub. L. 107–155, Sec. 402(a)(4).

The Commission seeks comment on whether it should adopt a provision, in 11 CFR 400.1, whereby candidates and national and State committees of political parties would be permitted to affirmatively ''opt-out'' of the Millionaires'' Amendment's benefits and obligations, in cases where all of the following conditions were met: (1) The candidate has no intention of making expenditures from personal funds in excess of the relevant threshold amount in 11 CFR 400.9; (2) the candidate and the candidate's authorized committee have no intention of accepting contributions under the increased limits; and (3) the national and State committees of the candidate's political party have no intention of making coordinated expenditures on behalf of the candidate's election. By ''opting-out,'' the candidate would be prohibited from accepting contributions under the increased limits and the national and State committees of the candidate's political party would be prohibited from making coordinated expenditures on behalf of the candidate's election in excess of the usual coordinated expenditure limits in 11 CFR 109.32(b). In return, the candidate and the national and State committees of the candidate's political party would be exempt from all the notification and reporting obligations under 11 CFR part 400.

In addition, the Commission seeks comment on whether, and under what circumstances, candidates and national and State committees of political parties who had ''opted out'' should be permitted to opt back in to the Millionaires'' Amendment's benefits and obligations.

2. 11 CFR 400.2 Definition of ''Election Cycle''

BCRA provides a definition of ''election cycle,'' which is, by its own terms, specific to the Millionaires'' Amendment. 2 U.S.C. 431(25). New 11 CFR 400.2 implements this definition, tracking the specific language of the statute. Ordinarily, statutory definitions from 2 U.S.C. 431 are implemented by regulations in part 100, which includes definitions that have application throughout Title 11. However, the regulatory definition of ''election cycle'' in 2 U.S.C. 431(25) is codified in part 400 because the scope of the definition in 2 U.S.C. 431(25) is limited, by its own terms, to the Millionaires' Amendment.

''Election cycle'' is defined in the Millionaires'' Amendment in BCRA to be the period from election-to-election, with the primary election and the general election considered to be separate elections. 2 U.S.C. 431(25). Thus, the period from the day after the last general election for a particular office to the day of the next primary election for that same office is one election cycle, and the period from the day after the primary election to the day of the general election is another separate election cycle.

In the case of a run-off election, the Commission has decided to treat it as an extension of the election cycle containing the election that necessitated the run-off under 11 CFR 400.2(c). For example, in the case of a primary election where no candidate receives the necessary percentage of votes to be declared the winner and where, therefore, a run-off election must be

held to determine the winner, the Commission will consider the run-off election to be part of the primary election cycle, for purposes of the Millionaires' Amendment.

3. 11 CFR 400.3 Definition of ''Opposing Candidate''

The operative provisions of the Millionaires'' Amendment are triggered by expenditures of personal funds by ''an opposing candidate.'' *See* 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). New 11 CFR 400.3 defines ''opposing candidate.'' Paragraph (a) applies to primary elections. It establishes that ''opposing candidate'' means another candidate seeking the nomination of the same party as the candidate who may benefit from increased contribution limits and the lifting of the coordinated party expenditure limits. The final sentence of this paragraph clarifies that a candidate may have more than one ''opposing candidate'' in a primary.

The Commission seeks comment as to whether ''opposing candidate'' should be expanded to include candidates seeking *another* political party's nomination for the same office. Under such an expanded definition, for example, a self-financed candidate seeking the nomination of political party ABC would be an ''opposing candidate'' where his or her personal funds are intended to influence the primary of political party XYZ by working to defeat whichever candidate of political party XYZ is judged to be the strongest opponent of the self-financed candidate in the general election.

Paragraph (b) of 11 CFR 400.3 applies to general elections, and establishes that ''opposing candidate'' means another candidate seeking election to the same office as the candidate who may benefit from increased contribution limits. Again, the final sentence states that a candidate may have more than one ''opposing candidate'' in the general election.

4. 11 CFR 400.4 Definition of ''Expenditure From Personal Funds''

The amount of ''expenditures from personal funds'' by an opposing candidate is an important factor in determining whether the increased contribution limits and unlimited coordinated party expenditures are permitted under the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This term is defined in both the Senate and the House of Representatives versions of the Millionaires' Amendment as ''an expenditure made by a candidate using personal funds,'' as ''a contribution or loan made by a candidate using personal funds,'' and as ''a loan secured using such funds to candidate's authorized committee.'' 2 U.S.C. 434(a)(6)(B)(i) (Senate); 2 U.S.C. 441a–1(b)(1)(A) (House of Representatives).

New 11 CFR 400.4 implements this statutory definition and includes cross-references to 11 CFR 100.33, which defines ''personal funds.'' The introductory wording of 11 CFR 400.4(a) states that all of the items described in paragraphs (a)(1) through (a)(4) are aggregated to determine expenditures from personal funds.

Paragraph (a)(1) follows the definition of ''expenditure'' in 11 CFR part 100, subparts D and E. It includes payments made directly by the candidate for purposes of influencing the election in which he or she is a candidate. Paragraph (a)(2) includes in the definition contributions and loans made by the candidate to his or her authorized committee using personal funds. 2 U.S.C. 434(a)(6)(B)(i)(II). Paragraph (a)(3) includes in the definition a loan made by any person to the candidate's authorized committee if that loan is secured or guaranteed by the candidate's personal funds. BCRA requires that obligations to make expenditures from personal funds be included when aggregating such expenditures. 2 U.S.C. 434(a)(6)(B)(ii) (Senate); 2 U.S.C. 441a–1(b)(1)(A)(ii) (House of Representatives). Thus, 11 CFR 400.4(a)(4) states that any obligation to make an expenditure from personal funds that is legally enforceable against the candidate falls within the definition of ''expenditure from personal funds.''

BCRA does not define when an expenditure from personal funds is considered to be made. The Commission, in 11 CFR 400.4(b), defines when an expenditure from personal funds will be considered made for purposes of 11 CFR part 400. Paragraph (b) states that an expenditure is considered made on the date the funds are deposited into the bank account designated by the candidate's authorized committee as the campaign depository, on the date the instrument transferring the funds is signed, or on the date the contract obligating the personal funds is executed, whichever date is earlier. Accordingly, contributions or loans made by the candidate to his or her authorized committee or loans made by any person but secured or guaranteed with the candidate's personal funds will be considered made on the date the loaned funds are deposited into the authorized committee's bank account or, in the case of a loan from a third party secured by the candidate's personal funds, the date the contract obligating the candidate's personal funds was signed, whichever date is earlier. In the situation where a candidate makes direct expenditures on behalf of his or her authorized committee, the expenditure will be considered to have been made on the date he or she signed the check or other instrument conveying the funds or signed a contract obligating his or her personal funds in connection with the direct expenditure. Evidence of expenditures will be receipts, cancelled checks, and signed contracts and such documents must be maintained under the recordkeeping provisions of 11 CFR 102.9.

5. 11 CFR 400.5 Definition of ''Applicable Limit''

The Senate provisions of the Millionaires'' Amendment use the term ''applicable limit.'' 2 U.S.C. 441a(i)(1)(A). This means the amount limitation on contributions to candidates by persons other than multicandidate committees in 2 U.S.C. 441a(a)(1)(A) that is modified by the operation of the Millionaires' Amendment. Although the House of Representatives version does not use the term ''applicable limit,'' it also operates to increase the 2 U.S.C. 441a(a)(1)(A) limits for individuals. 2 U.S.C. 441a–1(a)(1)(A). Accordingly, new 11 CFR 400.5 defines ''applicable limit'' by linking the term to the contribution limitation in 11 CFR 110.1(b)(1), which implements 2 U.S.C. 441a(a)(1)(A). The Commission notes this applicable limit will most likely change every two years due to the indexing of the applicable limit for inflation under 2 U.S.C. 441a(c) and 11 CFR 110.1(b)(1). *See* 11 CFR 110.17(b).

6. 11 CFR 400.6 Definition of ''Increased Limit''

The Millionaires'' Amendment, under certain circumstances, allows a candidate certain advantages to respond to expenditures from personal funds by an opposing candidate. One of these advantages is an increase in the amount limitation on contributions to the candidate by individuals. The other advantage is a suspension of the usual limits on coordinated expenditures by national and State political party committees in connection with the general election campaign of the candidate (*see* 11 CFR 109.32(b)). 2 U.S.C. 441a(i)(1)(C) (Senate); 2 U.S.C. 441a–1(a)(1) (House of Representatives). This suspension of the coordinated expenditure limits applies to *any*

coordinated spending authority either of these party committees may assign to another party committee, such as a Congressional campaign committee or a district or local party committee, under 11 CFR 109.33.

New 11 CFR 400.6 defines ''increased limit'' to mean an amount limitation on contributions from individuals that exceed the applicable limit (*see* Explanation and Justification for new 11 CFR 400.5, above) in 11 CFR 110.1(b). It is important to note that under the Millionaires' Amendment the amount limitations for contributions from persons other than individuals (political committees, multicandidate political committees (PACs), partnerships, limited liability corporations, Indian tribes, etc.) to candidates do not increase.

New 11 CFR 400.6 also includes within the definition of ''increased limit'' the suspension of party expenditure limits, where applicable. The Commission notes that nothing in the Millionaires' Amendment changes the restrictions on coordinated party expenditures in 11 CFR 109.35.

7. 11 CFR 400.7 Definition of ''Contribution That Exceeds the Applicable Limit''

The Millionaires' Amendment provides that, in certain circumstances, an individual may contribute more to a candidate than otherwise allowed under 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b). The limits in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b) are defined as the ''applicable limit'' in new 11 CFR part 400. *See* Explanation and Justification for new 11 CFR 400.5, above. New 11 CFR 400.7 defines ''contribution that exceeds the applicable limit'' as the difference between the contribution amount and the applicable limit.

Example: A contributor delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). Because the current applicable limit under 11 CFR 110.1(b)(1) is $2,000, the ''amount of the contribution above the applicable limit'' is $4,000.

8. 11 CFR 400.8 Definition of ''Gross Receipts''

Both the Senate and House of Representatives provisions of the Millionaires' Amendment take into account any overall fundraising advantage that a candidate may have over his or her opposing candidate before allowing the opposing candidate's expenditures from personal funds to trigger increased limits on contributions to the candidate and unlimited coordinated party expenditures on behalf of the candidate. The candidate's fundraising advantage, if any, is called the ''gross receipts advantage'' in both versions of the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(2)(B) (House of Representatives). If the candidate's gross receipts advantage offsets the advantage the opposing candidate derives from the expenditure of his or her personal funds, then the increased contribution limits do not come into play. The Commission's regulations do not define the term ''gross receipts advantage.'' Instead, the Commission has incorporated the calculation of ''gross receipts advantage'' into the formulas for determining the opposition personal funds amount in 11 CFR 400.10 (*see* Explanation and Justification for new 11 CFR 400.10, below).

''Gross receipts'' is not defined in BCRA. New 11 CFR 400.8 defines ''gross receipts'' by reference to an existing reporting regulation already applicable to authorized committees in other contexts, 11 CFR 104.3(a)(3). Section 104.3(a)(3) enumerates the types of receipts that make up the ''total amount of receipts'' and that must be reported by a candidate's principal campaign committee on behalf of all the candidate's authorized committees.[5] This approach has the benefit of relying on rules and concepts already familiar to candidates and authorized committees to implement this part of BCRA.

9. 11 CFR 400.9 Definition of ''Threshold Amount''

Both the Senate and House of Representatives provisions of the Millionaires' Amendment define a ''threshold amount.'' If the opposing candidate's expenditures from personal funds, adjusted for the candidate's expenditures from personal funds and the candidate' gross receipts advantage (*see* Explanation and Justification for new 11 CFR 400.10, below), exceed this threshold amount, or specified multiples of this threshold amount, and other conditions are met, the candidate receives the advantage of increased contribution limits and the lifting of the coordinated party spending limits.

In the Senate provisions, the threshold amount varies from State to State according to a statutory formula called ''State-by-State Competitive and Fair Campaign Formula.'' 2 U.S.C. 441a(i)(1)(B)(i). The formula is the sum of $150,000 plus the product of the ''voting age population'' of the State and $0.04. *Id.*

The interim final rules define ''threshold amount'' in new 11 CFR 400.9. Paragraph (a) applies to Senate elections. It defines threshold amount by restating the ''State-by-State Competitive and Fair Campaign Formula'' from 2 U.S.C. 441a(i)(1)(B)(i). Paragraph (a) also defines ''voting age population'' by reference to new 11 CFR 110.18, which is entitled ''voting age population.'' *See also* former 11 CFR 110.9(d). New 11 CFR 110.18 provides that the term means ''resident population, 18 years of age or older.'' That section also provides that the Commission will assure that this data is published annually in the **Federal Register**. The Commission will also post this data on its website.

Paragraph (b) applies to House of Representatives elections. Because the threshold amount in House of Representatives elections is statutorily fixed at $350,000, paragraph (b) simply restates that amount. 2 U.S.C. 441a–1(a)(1).

10. 11 CFR 400.10 Definition of ''Opposition Personal Funds Amount''

The purpose of the Millionaires' Amendment is to allow a candidate to respond to very large expenditures of personal funds by an opposing candidate. However, the operative provisions of the Millionaires' Amendment are not triggered directly by the opposing candidate's expenditures from personal funds. Instead, the opposing candidate's expenditure of personal funds is measured relative to the candidate's own expenditures from personal funds. For both Senate and House of Representatives elections, the ''opposition personal funds amount'' is the difference between the opponents' expenditures from personal funds and the candidate's own expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the operation of the Amendment in a situation where a candidate's own expenditures from personal funds offsets the opponent's expenditures from personal funds.

The opposition personal funds amount is subject to one other factor, called the ''gross receipts advantage.'' 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C.

[5] Note that certain amounts that qualify as ''expenditures from personal funds'' are reported under 11 CFR 104.3(a)(3), *e.g.*, contributions from candidates under 11 CFR 104.3(a)(3)(ii). However, expenditures from personal funds are expressly excluded from BCRA's definition of ''gross receipts advantage.'' 2 U.S.C. 441a(i)(8)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives). The Commission has accounted for this in the computation of ''opposition personal funds amount'' in 11 CFR 400.10, below.

441a–1(a)(2)(B) (House of Representatives). As explained in more detail above, if the candidate's overall fundraising advantage, called the ''gross receipts advantage,'' offsets an opposing candidate's expenditures from personal funds, the increased contribution and coordinated party expenditure limits will not be triggered. Given that gross receipts advantage must be taken into account in determining the opposition personal funds amount, the Commission has decided to imbed the factors necessary for calculating gross receipts advantage into the formulas in the regulations for determining the opposition personal funds amount, as explained below.

Accordingly, 11 CFR 400.10 defines ''opposition personal funds amount'' by setting out three mutually exclusive formulas. Only one of the formulas will apply at a given time, depending on the date of the computation. The date of computation is important because Congress, in BCRA, specified two benchmark dates for making the determination of gross receipts advantage: June 30 and December 31 of the year preceding the year in which the general election is held. Before June 30 of the year preceding the year in which the general election is held, gross receipts advantage does not seem to be given effect by the statute. 2 U.S.C. 441a(i)(1)(D)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives). On or after June 30 of the year preceding the year in which the general election is held, however, gross receipts advantage must be taken into account in determining the opposition personal funds amount.

The Commission notes that, although the statute uses the benchmark dates of June 30 and December 31 of the year preceding the year in which the general election is held for determining gross receipts advantage, the formulas in the Commission's rule for calculating opposition personal funds amount (new 11 CFR 400.10), are framed in terms of the later dates of July 16 of the year preceding the year in which the general election is held and February 1 of the year in which the general election is held, respectively. The reason for this discrepancy is that the disclosure reports containing the necessary information for determining gross receipts advantage as of June 30 and December 31 of the year preceding the year in which the general election is held, the Second Quarterly Report, the Year End Report, and the supplement reports required under new 11 CFR 104.19, are not due until July 15 of the year preceding the year in which the general election is held and January 31 of the year in which the general election is held, respectively. Furthermore, it will not actually be possible to make the necessary calculations until the day after each of those reports is due.

Accordingly, the formulas for calculating the opposition personal funds amount revolve around two important dates: July 16 of the year preceding the year in which the general election is held (the day after the Second Quarterly Report is due) and February 1 of the year in which the general election is held (the day after the Year End Report is due).

The formulas and their respective effective dates are set out in paragraph (a) of new 11 CFR 400.10 using variables that are defined in paragraph (b). The first term is the same in each of the formulas: The difference between the expenditures of personal funds by the candidate and the opposing candidates. This is expressed as a formula, ''a – b,'' where ''a'' is the amount of expenditures from personal funds by the opposing candidate and ''b'' is the amount of expenditures from personal funds by the candidate seeking to accept contributions under the increased limits. The difference between the three sets of formulas is how gross receipts advantage is computed. In the formula that applies prior to July 16 of the year before the general election year (paragraph (a)(1)), gross receipts advantage is *not* factored into the formula, as explained above. Thus, during this timeframe, the opposition personal funds amount is simply the difference between the expenditures from personal funds by the candidate and each opposing candidate.

The first of the benchmark dates set by Congress for computing gross receipts advantage is June 30 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until July 16 of the year before the general election year. Accordingly, July 16, rather than June 30 of the year before the general election year, marks the beginning date for applicability of the second formula (paragraph (a)(2)).

Paragraph (a)(2) sets out two different formulas (using the terminology of the formula, ''a – b – ((c – d)÷2)'' or ''a – b''). Variable ''c'' is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held. Variable ''d'' is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held.

If the amount for variable ''c'' is greater than the amount for variable ''d,'' then the first of these formulas must be used to determine the opposition personal funds amount (a – b – ((c – d)÷2)). If the reverse is true, however, then the gross receipts advantage is considered to be equal to $0 because BCRA states that the gross receipts advantage is taken into consideration only if the candidate's authorized committee's gross receipts exceed the opposing candidate's authorized committee's gross receipts. 2 U.S.C. 441a(i)(1)(E)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives) (''* * * the term 'gross receipts advantage' means the excess, *if any* * * *'') (emphasis added). Thus, the opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, ''a – b''). The computation of gross receipts advantage then remains constant until the next statutory benchmark date occurs. It is important to note, however, that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

The second of the benchmark dates set by Congress for computing gross receipts advantage is December 31 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until February 1 of the general election year. Accordingly, February 1 of the general election year, rather than December 31 of the year before the general election year, marks the beginning date for applicability of the third set of formulas (paragraph (a)(3)).

Like paragraph (a)(2), paragraph (a)(3) sets out two formulas (using the terminology of the formula, ''a – b – ((e – f)÷2)'' or ''a – b''). Variable ''e'' is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by

the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held. Variable ''f'' is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held.

If the amount for variable ''e'' is greater than the amount for variable ''f,'' then the first of these formulas must be used to determine the opposition personal funds amount (a − b − ((e − f)÷2)). If the reverse is true, however, then the gross receipts advantage is not taken into consideration, for the same reason stated in the Explanation and Justification for paragraph (a)(2), above, and consequently is equal to $0. The opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, ''a − b''). The computation of gross receipts advantage then remains constant until the day of the general election. Once again, however, it is important to note that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

Notification and Reporting Requirements

1. 11 CFR 400.20 Declaration of Intent

Both the Senate and the House of Representatives versions of the Millionaires' Amendment (2 U.S.C. 434(a)(6)(B)(ii) (Senate) and 441a–1(b)(1)(B) (House of Representatives)) require candidates to file a ''declaration of intent'' within 15 days of becoming a candidate. This declaration must state the amount by which the candidate intends to exceed the threshold amount (*see* Explanation and Justification for new 11 CFR 400.9, above). New 11 CFR 400.20 implements these statutory requirements.

Paragraph (a) sets forth the basic requirements for filing Declarations of Intent, including the 15 day filing deadline. *See* 11 CFR 100.3 for the definition of ''candidate.'' The declaration must be filed with the Commission and with each ''opposing candidate'' as described in 11 CFR 400.3.

Paragraph (b) sets forth the methods of filing for the Senate in paragraph (b)(1) and for the House of Representatives in paragraph (b)(2). Because Senate candidates are exempt from the FECA's electronic filing requirements at 2 U.S.C. 434(a)(11), under paragraph (b)(1), Senate candidates must send a *copy* of their Statement of Candidacy with the declaration to the Commission, *in addition* to their paper filing with the Secretary of the Senate. Candidates will be required to send the copy of their filing to the Commission using either a facsimile machine or as an attachment to an electronic mail message to ensure that it is received within the statutorily required time frame. Additionally, Senate candidates will be required to fax or electronically mail either their FEC Form 2 as an attachment, or the information required in FEC Form 2 by 11 CFR 101.1(a), including the amount by which the they expect to exceed the threshold amount to each opposing candidate.

Under paragraph (b)(2), candidates for the House of Representatives will also be required to include the Declaration of Intent information on their Statement of Candidacy, FEC Form 2. Currently, political committees that exceed, or that have reason to expect to exceed, $50,000 in contributions or expenditures must file electronically. Paragraph (b)(2) requires candidates for the House of Representatives who state on FEC Form 2 that they intend to exceed the threshold amount, as defined in 11 CFR 400.9, to file electronically. This is because the electronic filing threshold in 11 CFR 104.18 ($50,000) is lower than the $350,000 threshold for part 400. By declaring his or her intention to exceed $350,000 in expenditures from personal funds, a House of Representatives candidate is stating that he or she anticipates spending more than seven times the $50,000 electronic filing threshold. Additionally, House of Representatives candidates are required to fax or electronically mail their FEC Form 2 as an attachment, or the information required therein by 11 CFR 101.1(a), including the amount by which they intend to exceed the threshold amount, to each opposing candidate.

With these required methods of filing, the Commission seeks to facilitate the making and receiving of the Declaration of Intent by all candidates. As explained in the discussion of revised § 101.1 above, due to the availability of computers in public libraries and the availability of free electronic mail on several Web sites, the Commission does not believe that requiring the use of electronic mail will pose an undue burden on candidates, especially when weighed against the fact that electronic mail will provide the most rapid manner of notification possible.

2. 11 CFR 400.21 Initial Notification of Expenditures From Personal Funds

BCRA (2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives)) requires the filing of an ''initial notification'' of expenditures from personal funds within 24 hours of the time certain threshold amounts of expenditures from candidates' personal funds are exceeded. For Senate candidates, that amount is two times the threshold amount defined in 11 CFR 400.9(a). For House of Representatives candidates, that amount is the threshold amount as defined in 11 CFR 400.9(b). New 11 CFR 400.21 largely tracks the wording of the statute at 2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives), with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file initial notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.21 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients, including the Commission.

New 11 CFR 400.21 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making expenditures from personal funds in connection with the election exceeding two times the threshold amount, as defined in 11 CFR 400.9. Paragraph (a) makes clear that such notifications must be received by each required recipient

within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.21 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making expenditures from personal funds in connection with the election exceeding the $350,000 threshold amount, as defined in 11 CFR 400.9. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of initial notification of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

3. 11 CFR 400.22 Additional Notification of Expenditures From Personal Funds

After the initial notification discussed above, BCRA (2 U.S.C. 434(a)(6)(B)(iv) and 441a–1(b)(1)(D)) requires the filing of additional notices each time expenditures from the candidate's personal funds exceed $10,000. Like 11 CFR 400.21, new 11 CFR 400.22 largely tracks the language of the statute, with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file additional notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.22 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients.

New 11 CFR 400.22 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (a) makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.22 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of additional notifications of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

4. 11 CFR 400.23 Contents of Notifications of Expenditures From Personal Funds

The Millionaires' Amendment at 2 U.S.C. 434(a)(6)(B)(v) (Senate) and 441a–1(b)(1)(E) (House of Representatives) specifically sets forth the contents of the initial and additional notifications discussed above. BCRA requires that the initial and each additional notification contain the following information: (1) The name and office sought by the candidate making the expenditures from personal funds, (2) the date and amount of each such expenditure, and (3) the total amount of expenditures from personal funds that the candidate has made in connection with the election from the beginning of the election cycle to the date of the expenditure that, when aggregated with all others, exceed the $10,000 threshold, thereby triggering the additional notification requirement. The interim final rule in 11 CFR 400.23 largely tracks the notification requirements of the statute.

While new 11 CFR 400.23(c) requires candidates and their authorized committees to provide information regarding the date and amount of each expenditure from personal funds, the Commission has included language in paragraph (c) to make it clear that the candidate's principal campaign committee is not required to supply such detailed information regarding each expenditure from personal funds more than once.

Example: Candidate X, a candidate for the House of Representatives, spends $200,000 from personal funds in connection with his election campaign on April 1 and another $200,000 on April 10. On April 11, within 24 hours of triggering the $350,000 threshold, Candidate X's principal campaign committee files an initial notification of expenditures from personal funds pursuant to 11 CFR 400.21, on which the committee provides the dates and amounts of all expenditures from personal funds to date, namely the expenditure of $200,000 on April 1 and the subsequent expenditure of $200,000 on April 10. On April 12, Candidate X spends an additional $15,000 from personal funds. On April 13, within 24 hours, Candidate X's principal campaign committee files an additional notification of expenditures from personal funds as required by 11 CFR 400.22. On the April 13 additional notification, Candidate X's principal campaign committee would provide the date and amount of the $15,000 expenditure and would report the total aggregate amount of expenditures from personal funds as $415,000 ($200,000 + $200,000 + $15,000). Candidate X's principal campaign committee would not be required to report the date and amount of the two $200,000 expenditures on the April 13 additional notification because details regarding those expenditures were already provided in the initial notification of expenditures from personal funds that the committee filed on April 11.

5. 11 CFR 400.24 Methods of Filing Notifications

BCRA does not specify methods of filing the initial and additional Notifications of Expenditures from Personal Funds. New 11 CFR 400.24 addresses methods of filing. Paragraph (a) contains the requirements for Senate candidates and paragraph (b) contains the requirements for House of Representatives candidates. As discussed in greater detail below (*see* Explanation and Justification for 11 CFR 400.25), while BCRA could be interpreted to require candidates themselves to file initial and additional notifications of expenditures from personal funds, the Commission concludes that the primary reporting obligation should reside with the candidates' principal campaign committees, although candidates must ensure that their principal campaign committees comply with this obligation.

Although 2 U.S.C. 434(a)(6) does not specifically require Senate candidates to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate, 2 U.S.C. 432(g)(1), which was not amended by BCRA, states that all reports required to be filed by Senate candidates under the FECA must be filed with the Secretary of the Senate. Accordingly, paragraph (a) of 11 CFR 400.24 requires Senate candidates'

principal campaign committees to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate on FEC Form 10. Paragraph (a) also requires Senate candidates' principal campaign committees to send a copy of FEC Form 10 by either facsimile machine or electronic mail or to send an electronic mail containing the information required by 11 CFR 400.23 to the Commission and to each opposing candidate. Although Senate candidates are exempt from the FECA's electronic filing requirements, the Commission is requiring their principal campaign committees to send this time-sensitive information regarding their expenditures from personal funds by facsimile machine or electronic mail in order to provide the most rapid notification possible.

Paragraph (b) of 11 CFR 400.24 requires certain methods of filing for House of Representatives candidates. As noted above, House of Representatives candidates are subject to the electronic filing requirements of 2 U.S.C. 434(a)(11). Therefore, whereas Senate candidates' principal campaign committees must send their notifications to the Commission by facsimile machine or by electronic mail, House of Representatives candidates' principal campaign committees must electronically file FEC Form 10 as they would any other report using the Commission's electronic filing system. This is because House of Representatives candidates who exceed the threshold amount in 11 CFR 400.10(b) will be well over the $50,000 electronic filing threshold. Additionally, House of Representatives candidates' principal campaign committees will be required to send their FEC Form 10 via facsimile or as an attachment to an electronic mail message, or to send an electronic mail message containing the information required in new 11 CFR 400.23 to each opposing candidate as well as to the national party committees of each opposing candidate.

Although 11 CFR 400.21 and 400.22 require candidates to file the initial notification of expenditures from personal funds and additional notification of expenditures from personal funds with their opposing candidates, they may not be able to do so because they are unable to obtain the phone number of the facsimile machine or the electronic mail address of one or more of their opposing candidates' principal campaign committees. This may be because the opposing candidate's principal campaign committee failed to supply that information in its Statement of Organization. The Commission seeks comment on whether it should waive these notification to opposing candidates requirements where the opposing candidate's authorized committee does not report the phone number for its facsimile machine or its electronic mail address on FEC Form 1, the Statement of Organization.

6. 11 CFR 400.25 Reporting Obligations of Candidates and Candidates' Principal Campaign Committees

The Commission notes that BCRA states that *candidates* are required to file various notifications under the Millionaires' Amendments. For example, BCRA requires candidates to file initial notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iii) and 441a-1(b)(1)(C)) and additional notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iv) and 441a-1(b)(1)(D)). In the case of notifications of the disposal of excess contributions (2 U.S.C. 441a(i)(3) and 441a-1(a)(4)), either the candidates or their authorized committees must file the notifications. These reporting obligations are similar in nature and extent to other reporting requirements in FECA. Accordingly, the Commission has decided to implement these new reporting requirements in a manner consistent with the way in which other reporting requirements operate under 2 U.S.C. 434 and 11 CFR part 104.

Under FECA, political committees, including candidates' authorized political committees and principal campaign committees, are required to file regularly scheduled reports of receipts and disbursements. *See* 11 CFR 104.3. Although the obligation to file the reports rests with political committees, it is the committees' treasurers who are liable if their committees fail to file the required reports. *See* 11 CFR 104.1(a). Consequently, the Commission is taking a similar approach to the reporting requirements under the Millionaires' Amendment. While the Commission's regulations implementing the new reporting provisions state that candidates' principal campaign committees are required to file the required reports and notifications (*see* 11 CFR 400.21, 400.22, 400.24, and 400.54, below), candidates are responsible for ensuring that their principal campaign committees meet these new disclosure obligations under new 11 CFR 400.25. The Commission seeks comment on whether holding candidates personally liable for violations of the reporting requirements under subpart B of part 400 is consistent with Congressional intent.

Determining When the Increased Limits Apply

The Millionaires' Amendment prescribes rules for calculating the amounts of the increased limits to allow response to expenditures from personal funds by an opposing candidate, and also for determining when these increased limits do and do not apply. New 11 CFR part 400, subpart C implements the Millionaires' Amendment provisions concerning when a candidate may and must not accept contributions from individuals under the increased limits and when a national or State political party political party committee may and must not make coordinated party expenditures exceeding the limits in 2 U.S.C. 441a(d). New subpart D of part 400 covers the procedures for calculating the increased limits.

1. 11 CFR 400.30 Receipt of Notification of Opposing Candidate's Expenditures From Personal Funds

Paragraph (a) of new 11 CFR 400.30 clarifies that the section applies to both Senate races and House of Representatives races.

Paragraph (b) sets the conditions under which a candidate may accept contributions above the applicable limit, while paragraph (c) sets the conditions under which certain political party committees may make unlimited coordinated party expenditures on behalf of the candidate. There are several conditions that must be satisfied before a candidate may accept contributions above the applicable limit (*see* 11 CFR 400.5) pursuant to the increased contribution limits (*see* 11 CFR 400.6), and before a national or State political party committee may make unlimited coordinated party expenditures on behalf of the candidate in the general election. The first of these conditions is that the candidate must receive certain notification from the opposing candidate. 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). This condition is implemented in new 11 CFR 400.30.

There seems to be an inconsistency in the statute between the notification that the opposing candidate must give, and the notification that the candidate must receive. In both the Senate and the House of Representatives versions, the opposing candidate must give notifications in terms of his or her ''expenditures from personal funds.'' 2 U.S.C. 434(a)(6)(B)(ii) through (v) (Senate); 2 U.S.C. 441a–1(b)(1)(B)

through (E) (House of Representatives). The candidate must, however, receive notification of the ''opposition personal funds amount.'' 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). The terms ''expenditure from personal funds'' and ''opposition personal funds amount'' mean different things in the Millionaires' Amendment. *See* 11 CFR 400.4 and 400.10, respectively.

New 11 CFR 400.30 reconciles these provisions by interpreting the reference to ''opposition personal funds amount'' in 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives) to mean ''expenditure from personal funds.'' Thus, paragraph (b) of new 11 CFR 400.30 provides that a candidate must not accept, pursuant to this part, any contribution above the applicable limits (*see* 11 CFR 400.5) until the candidate has received the initial notification of an opposing candidate's expenditures from personal funds, as defined in new 11 CFR 400.4.

Although this regulatory interpretation diverges to some extent from the wording of 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 441a–1(a)(3)(A)(i) (House of Representatives), this interpretation harmonizes the statutory scheme by reconciling the nature of the notification that the opposing candidate must give with the nature of notification that the candidate must receive. This interpretation also makes sense when one considers that the self-financed candidate is not able to calculate the opposition personal funds amount in order to give notification of this amount to the candidate in the initial notification. To calculate the opposition personal funds amount, one must have data from both candidates (*i.e.*, about expenditures from personal funds by both candidates). *See* 11 CFR 400.10. The purpose of the notification requirements in the statute seems to be to provide the candidate with all the data necessary to calculate the opposition personal funds amount. The regulatory interpretation in paragraph (b) of new 11 CFR 400.30 thus accomplishes the apparent purpose of the statute.

Under the Millionaires' Amendment, one of the advantages that may be granted to a candidate to allow response to expenditures from personal funds by the opposing candidate is unlimited coordinated party expenditures on the candidate's behalf. *See* 2 U.S.C. 441a(i)(1)(C)(iii)(III) (Senate); 2 U.S.C. 441a–1(a)(1)(C) (House of Representatives). Paragraph (c) of new 11 CFR 400.30 applies to national and State committees of a political party (including Congressional campaign committees), and makes it clear that such party committees may not make unlimited coordinated party expenditures on behalf of a candidate until that candidate has received the initial notification.

The Commission is aware that, under some circumstances, candidates, authorized committees, and party committees may not actually receive initial and additional notifications sent by opposing candidates in a timely manner due to technological difficulties, faulty equipment, or other reasons. To enable candidates and authorized committees to accept contributions and party committees to make coordinated expenditures under the increased limits as soon as possible once expenditures from personal funds above the threshold amount have been made, the Commission is adding the concept of ''constructive notification'' to paragraphs (b) and (c) of 11 CFR 400.30. Under paragraph (d), a candidate, authorized committee, or party committee is considered to have received constructive notice of the filing of an opposing candidate's initial or addition notification of expenditures from personal funds when they obtain a copy of such notification that is received by the Commission.

2. 11 CFR 400.31 Preventing Disproportionate Advantage Resulting From Increased Contribution and Coordinated Party Expenditure Limits

Congress placed several checks on the operation of the Millionaires' Amendment. Among these checks is the so-called ''proportionality provision.'' 147 Cong. Rec. S2538 (daily ed. March 20, 2001) (Sen. DeWine). The proportionality provision ensures that the advantages of the increased contribution and coordinated party spending limits allowed to the candidate facing a self-financed opponent do not tip the scales disproportionately in favor of the candidate enjoying the increased limits. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). New 11 CFR 400.31 implements the statutory proportionality provision.

The proportionality provision requires a candidate and his or her authorized committee that accepts contributions under the increased limits, and a political party committee that makes coordinated party expenditures on behalf of the candidate under the increased limits, to monitor a certain proportion. The numerator of the proportion is the running total of contributions previously accepted and coordinated party expenditures previously made under the increased limits. The denominator of the proportion is the opposition personal funds amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives).

In the Senate version of the proportionality provision, a candidate and his or her authorized committee must not accept a contribution ''to the extent'' the contribution causes the proportion to exceed 110 percent. Similarly, a national or State political party committee must not make a coordinated party expenditure on behalf of the candidate ''to the extent'' that the expenditure causes the proportion to exceed 110 percent. 2 U.S.C. 441a(i)(2)(A)(ii). The House of Representatives version operates in an almost identical manner. The only difference in the House of Representatives version is that the proportion must not exceed 100 percent. 2 U.S.C. 441a–1(a)(3)(A)(ii).

Thus, the effect of the proportionality provision on the increased individual contribution limits is to cause the contribution limits to revert to the applicable limit in 11 CFR 110.1(b)(1) from the increased limits specified by the Millionaires' Amendment once the advantages of the increased limits reach a specified level that is disproportionate to the opposing candidate's expenditures from personal funds. Similarly, the effect of the proportionality provision on the suspension of coordinated party expenditure limits is to reintroduce the limit on national and State coordinated party expenditures in 11 CFR 109.32(b) when the advantages of the increased coordinated spending limits also become disproportionate.

Paragraph (a) of new 11 CFR 400.31 clarifies that the proportionality provision applies to both Senate and House of Representatives elections. Paragraph (b) identifies those who have responsibilities under the proportionality provision: Any candidate and his or her authorized committee that accepts contributions under the increased limits, and any party committee that makes coordinated party expenditures on behalf of such a candidate under the increased limits. The Commission seeks comment on whether holding candidates personally liable for violations of 11 CFR 400.31 is consistent with Congressional intent.

Paragraph (c) sets out the information that must be monitored by the candidates and authorized committees that accept contributions from individuals under the increased coordinated spending limits, and the party committees that make coordinated

party expenditures on behalf of candidates under the increased limits. This information consists of the three elements necessary to compute the proportion required by the statute: (1) The aggregate amount of contributions previously accepted by the candidate under the increased limits (paragraph (c)(1)); (2) the aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits (paragraph (c)(2)); and (3) the opposition personal funds amount (paragraph (c)(3)).

Paragraph (d) of 11 CFR 400.31 applies to Senate elections. Paragraph (d)(1)(i) provides that a candidate must not accept that part of a contribution that exceeds the applicable limit (*see* 11 CFR 400.7) if the contribution would cause the proportion to exceed 110%. Note that, under this circumstance, the candidate would be able to accept that part of the contribution up to the applicable limit. This would be so because, even if the increased limits do not apply because of the proportionality provision, contributions up to the applicable limit are still permitted under 11 CFR 110.1(b).

Example: A contributor who had made no prior contributions delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). The candidate determines that accepting the entire amount of the contribution would cause the proportion of the sum of the contributions previously accepted under the increased individual limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%. Therefore, the candidate may accept the first $2,000 of the contribution, but not the amount above that.

Paragraph (d)(1)(ii) states that the candidate or the candidate's authorized committee has an affirmative duty to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) equals 110 percent of the opposition personal funds amount. The purpose of this requirement is to ensure that national and State committees of the candidate's political party and the Commission are put on notice that the committees may no longer make coordinated party expenditures in connection with the candidate's general election campaign that exceed the ordinary expenditure limitations in 11 CFR 109.32(b).

Paragraph (d)(2) prohibits national and State committees of political parties from making coordinated party expenditures in excess of the expenditure limits in 11 CFR 109.32(b) in connection with a candidate's general election campaign when the sum of the aggregate amounts described in 11 CFR 400.31(c)(1) and the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. Again, as provided in the statute, the obligation is on the party committee not to make any coordinated party expenditures pursuant to the increased limits if the amount of that expenditure would cause the proportion of the sum of the contributions previously accepted under the increased limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%.

Paragraphs (e)(1) and (e)(2) operate analogously to paragraphs (d)(1) and (d)(2), respectively, in the context of House of Representatives elections. It is important to note that, like their Senate counterparts, candidates for the House of Representatives or their authorized committees have an affirmative duty, under 11 CFR 400.31(e)(2)(B), to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. In House of Representatives elections, however, the proportionality provision threshold is 100 percent of the opposition personal funds amount, not 110 percent, as in Senate elections.

3. 11 CFR 400.32 Effect of the Withdrawal of an Opposing Candidate

One of the checks placed on the operation of the Millionaires' Amendment by Congress comes into play when a candidate, whose expenditures of personal funds has triggered increased limits for another candidate, ceases to be a candidate. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a-1(a)(3)(B) (House of Representatives). 11 CFR 400.32 implements these provisions of the Millionaires' Amendment.

Paragraph (a)(1) clarifies that this new rule applies to both Senate and House of Representatives elections. Paragraph (a)(2) sets out the conditions under which the section operates. It is critical to determine when a candidate ''ceases to be a candidate'' within the meaning of the statute. To this end, paragraph (a)(2) of new 11 CFR 400.32 follows the approach of existing 11 CFR 110.3(c)(4)(iv), which defines when a candidate ceases to be a candidate for purposes of certain other contribution limits in the Act. This may occur, for example, when a candidate publicly withdraws from the race, or fails to file by the filing date specified in State law, or fails to qualify for a run-off election under State law.

Paragraph (b) of 11 CFR 400.32 applies to candidates and their authorized committees. It provides that candidates must not accept contributions under the increased individual contribution limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Paragraph (c) applies to national and State political party committees. It provides that such committees must not make any coordinated party expenditures under the increased spending limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Given that the events triggering the end of both the increased contribution limits and unrestricted coordinated party expenditures are matters of public knowledge, the opposing candidate need not provide notification of these events to any candidate or political party committee, as all candidates and party committees will be deemed to have constructive knowledge of these events.

4. Additional Reporting Issue

The Commission seeks comment on whether candidates and authorized committees that are entitled to accept contributions under the increased limits pursuant to 11 CFR part 400 should be required, at regular intervals (such as daily or weekly), to notify the Commission, of the opposition personal funds amount, the aggregate amount of contributions received to date under the increased limits, and the aggregate coordinated party expenditures made to date in connection with their campaign for election.

5. Additional Issue Regarding Repayment of Outstanding Debts to Vendors

The Commission seeks comments on the following issue. An authorized committee of a candidate that is opposing a self-financed candidate incurs debts to vendors in anticipation of being able to raise contributions above the applicable limit under 11 CFR

part 400 because the self-financed candidate's expenditures from personal funds allow the authorized committee to accept contributions under the increased limit. After the self-financed candidate ceases to be a candidate, either because the candidate has withdrawn from the campaign or the election has taken place, should the authorized committee be able to continue to raise funds under the increased limits to pay off the outstanding debts?

Calculating the Increased Limits

The rules in new subpart C of part 400 address the determination as to when, if ever, a candidate for the House of Representatives or Senate may accept contributions under the increased limits, and when, if ever, a political party committee may make coordinated party expenditures on behalf of the candidate under the increased limits. The regulations in subpart D go to determining the amounts of the increased limits.

Under 2 U.S.C. 441a(i) (Senate) and 2 U.S.C. 441a–1 (House of Representatives), when the relevant thresholds are triggered the contribution limit in 2 U.S.C. 441a(a)(1)(A) is increased. The Commission notes that 2 U.S.C. 441a(a)(1)(A) applies to *all* persons and is not limited to individuals. The Commission has decided to limit the increased contribution limit to individuals, however, based on the titles given to the Millionaires' Amendment provisions in BCRA and on the legislative history of the Millionaires' Amendment. *See, e.g.,* BCRA Secs. 304 and 319 (entitled ''Modification of *individual* contribution limits in response to expenditures from personal funds'' and ''Modification of *individual* contribution limits for House candidates in response to expenditures from personal funds,'' respectively) (emphasis added)); 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); 147 CR S2538 (daily ed. Mar. 20, 2001) (statement of Sen. DeWine) (explaining effect of triggering threshold amount on *individual* contribution limits). The Commission seeks public comment, however, on whether, despite provisions' titles in BCRA and the legislative history of the Millionaires' Amendment, the Commission should expand the availability of the increased contribution limit to include all persons and not only individuals.

1. 11 CFR 400.40 Calculating the Increased Limits for Senate Elections

Although the Senate and House of Representatives versions of the Millionaires' Amendment are similar in many respects, they differ in the amounts of the increased limits once those increased limits are triggered. 11 CFR 400.40 implements the increased limits for Senate elections. (11 CFR 400.41, below, implements the increased limits for House of Representatives elections.) Paragraph (a) of 11 CFR 400.40 states that the section applies to Senate elections.

Paragraph (b) states conditions on the operation of the increased limits as calculated under this section. Paragraph (b)(1) cross-references the conditions and restrictions in new subpart C. Paragraph (b)(2) clarifies that the amount limitations on contributions by persons other than multicandidate political committees under the increased limits are indexed for inflation, just as are the underlying applicable limits in 2 U.S.C. 441a(a)(1)(A) on which they are based. *See* 2 U.S.C. 441a(c).

Paragraph (c) outlines the procedure for calculating the increased contribution and coordinated party expenditure limits. Paragraph (c)(1) cross-references 11 CFR 400.10 and instructs the calculator to determine the opposition personal funds amount. Paragraph (c)(2) cross-references 11 CFR 110.18 and directs the calculator to determine the voting age population (''VAP'') of the candidate's State. Once those numbers have been determined, paragraph (c)(3) directs the calculator to a table containing formulas for computing the applicable increased contribution and coordinated party expenditure limits.

While the formulas in the table in paragraph (c)(3) may appear to differ from those provided in the statute, the resulting calculations are the same. If the Commission were to simply incorporate the language of the statutory formulas into the table, those seeking to calculate the increased limits would first have to perform a separate calculation to determine the relevant threshold amount before they would be able to make use of the formulas in the table. The Commission has determined that it is preferable to provide a table that synthesizes all of the calculations of the relevant thresholds needed to determine the increased contribution limits in one place.

2. 11 CFR 400.41 Calculating the Increased Limits for House of Representatives Elections

Unlike the increased limits in Senate elections, which vary according to increasing level of expenditures from personal funds by the opposing candidate, the increased limits in House of Representatives elections are fixed. If the opposing candidate's expenditures from personal funds cause the opposition personal funds amount to exceed the threshold amount, $350,000, a single set of increased limits is triggered. 2 U.S.C. 441a–1(a)(1)(A)–(C). 11 CFR 400.41 implements these increased limits.

Paragraph (a) clarifies that the section applies to House of Representatives elections. Paragraph (b) states the increased limits. Paragraph (b)(1) sets the increased contribution limit for individuals at $6,000, *i.e.,* three times the applicable limit in 2 U.S.C. 441a(a)(1)(A). 2 U.S.C. 441a–1(a)(1)(A). Paragraph (b)(2) states that the limit on coordinated party expenditures in 11 CFR 109.32(b) does not apply. 2 U.S.C. 441a–1(a)(1)(B).

3. 11 CFR 400.42 Effect of Increased Limits on the Aggregate Contribution Limits for Individuals

Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during the period which runs from January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. 2 U.S.C. 441a(a)(3)(A). Both the Senate and House of Representatives versions of the Millionaires' Amendment provide, however, that contributions made under the increased limits do not count against the aggregate contribution limit in section 441a(a)(3)(A). 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a–1(a)(1)(B). New 11 CFR 400.42 implements these statutory provisions.

Paragraph (a) clarifies that this section applies to all elections covered by the part, that is, both Senate and House of Representatives elections.

Both the Senate and the House of Representatives provisions of the Millionaires' Amendment provide that the 2 U.S.C. 441a(a)(3) aggregate contribution limit ''shall not apply with respect to any contribution made with respect to a candidate'' if such contribution is lawfully made under the increased limits. 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a-1(a)(1)(B) (House of

Representatives). The Commission is interpreting these provisions to mean that the amount of the contribution that exceeds the individual contribution limit in 11 CFR 110.1 does not count when aggregating contributions for purposes of 11 CFR 110.5, taking into account previous contributions made during the election cycle. New 11 CFR 400.5 allows an individual to include only the first $2,000 he or she contributes, regardless of whether it was a prior contribution or part of a contribution accepted under the increased limit, in the biannual aggregate contribution limit.

Example: In 2004, the contribution limit under 11 CFR 110.1 is $2,000. Contributor X contributes $1,500 to Candidate Y in April for the general election. Because Candidate Y is opposing a self-financed candidate, she can accept up to $6,000 under the increased limit. After learning this, Contributor X contributes an additional $3,000 to Candidate Y's campaign in May for the general election. Under 11 CFR 400.5, Contributor X should count the initial $1,500 contribution and $500 of the subsequent contribution towards the biannual aggregate limit. The remaining $2,500 of the $3,000 contribution accepted in May should not count towards that limit.

The Commission, however, seeks comment on whether 2 U.S.C. 441a(i)(1)(C) (i)(II) and (ii)(II) (Senate) and 2 U.S.C. 441a–1(a)(1)(B) (House of Representatives) should be interpreted in an alternative manner. Does the plain language of these statutory sections indicate that no part of a contribution accepted under the increased limits counts against the aggregate contribution limit in section 441a(a)(3), regardless of whether the contributor has made prior contributions to the candidate for that election? Under this alternative interpretation, Contributor X in the above example would not include *any* of the $3,000 contribution accepted in May in the biannual aggregate limit.

Paragraph (c) addresses situations where an individual contributor has contributed the maximum permitted under the aggregate biannual contribution limitation for individuals in 11 CFR 110.5, but has not contributed the maximum under the increased limits of 11 CFR part 400. Under this circumstance, a contributor may make contributions that, in the aggregate, do not exceed the applicable increased limit under 11 CFR 400.40(b) or 400.41(b) minus the applicable limit as defined in 11 CFR 400.5.

Example: Between January 1, 2003 and June 30, 2004, Contributor X has already contributed $37,500 to various candidates including $1,000 to Candidate Y. On July 10, 2004, Candidate Y determined that she could accept up to $6,000 under 11 CFR 400.40(b)(3) and solicited Contributor X for a $6,000 contribution. The applicable limit in 2004 is $2,000. Because Contributor X has already reached his aggregate biannual contribution limit, he may contribute up to $4,000 to Candidate Y ($6,000 − $2,000).

Disposal of Excess Contributions

BCRA added two identical provisions to FECA, one for the Senate and one for the House of Representatives, requiring candidates and their authorized committees to refund excess contributions that are not spent in connection with their elections. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). Subpart E of 11 CFR part 400, implements the requirements of these BCRA provisions.

1. 11 CFR 400.50 Definition of ''Excess Contributions''

The first section in subpart E defines the term ''excess contributions.'' BCRA describes the term ''excess contributions'' as ''the aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit * * * and not otherwise expended in connection with the election with respect to which such contributions relate * * *.'' 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a-1(a)(4) (House of Representatives). By referencing back to the definition of ''increased limit'' in 11 CFR 400.6, the regulatory definition of ''excess contribution'' allows candidates and their authorized committees to exclude the amount of a contribution, when added to previous contributions made by a person, that is less than or equal to the regular contribution limitations of 11 CFR 110.1 from the computation of excess contributions. This allows the candidates and their authorized committees the benefit of contributions that they would have received regardless of whether the increased limit provisions of the Millionaires' Amendment were triggered.

2. 11 CFR 400.51 Relation of Excess Contributions to the Election in Which They Are Made

The purpose of new 11 CFR 400.51 is to make clear that contributions accepted under the increased limit, that are accepted during an election cycle, whether a primary election cycle or a general election cycle, can only be spent for that election. A primary election is treated as an election separate from the general election. Thus, paragraph (a) requires that any excess contributions made during the primary election cycle must be refunded to the original contributor within 50 days of the primary election. Paragraph (b) contains a similar provision for the general election.

Paragraph (c) creates an exception from paragraphs (a) and (b) for run-off elections. Run-off elections will be considered as extensions of the elections that resulted in the run-off elections. Thus, candidates and their authorized committees are able to use contributions made under the increased limit during the applicable election cycle for the run-off election. Refunds of all excess contributions must be made within 50 days of the run-off election.

The Commission seeks comments on whether treating run-off elections as extensions of the elections that resulted in the run-off elections is an appropriate approach. Should the Commission, instead, treat run-off elections as separate elections and require that excess contributions be refunded within 50 days of the applicable primary or general election? Conversely, should the Commission treat the primary, general, and any run-off elections as one election with the refund period being within 50 days of the general election? Under this approach, however, candidates who do not participate in the general election would be required to refund excess contributions within 50 days of the primary election.

3. 11 CFR 400.52 Prohibition Against Redesignation of Excess Contributions

New 11 CFR 400.52 prohibits candidates and their authorized committees from seeking redesignation of contributions made under the increased limits to another election. It also prohibits contributors from redesignating a contribution made under the increased limits once the contribution has been made. The focus of the Millionaires' Amendment is on the fundraising ability of the candidate facing an opposing candidate who is a self-financed. The Commission concludes that nothing in BCRA suggests that once the election is over, the candidate should be able to carry over the benefit of the increased contribution limits into the next election where he or she would be opposing an entirely different candidate. In addition, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) provides for only one method of disposing of excess contributions and that is the refund of the excess contributions to the original contributors, which is incorporated into the interim final rules. Nevertheless, the Commission seeks comments on whether to amend the interim final rules by adding a similar prohibition against reattribution to a joint contributor of a contribution made under the increased limits in accordance with 11 CFR 110.1(k).

4. 11 CFR 400.53 Disposal of Excess Contributions

As stated above, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) requires candidates and their authorized committees to refund excess contributions to the original contributors within 50 days of the election. New 11 CFR 400.53 implements this requirement.

Paragraph (a) states that the candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under 11 CFR part 400. This ensures that only those contributors who actually made contributions to the candidate under the increased individual contribution limit provided for by the Millionaires' Amendment may receive refunds. Paragraph (a) also states that the refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle. This restriction prohibits authorized committees from refunding more money to an individual than that individual actually contributed.

Paragraph (b) of 11 CFR 400.53 addresses the situation where contributors do not cash, deposit, or otherwise negotiate the refunds checks sent to them under 11 CFR 400.53(a). Authorized committees will be required to disgorge to the United States Treasury an amount equal to the aggregate amount of any refund checks not cashed, deposited, or otherwise negotiated within six months of the date of the refund checks. Authorized committees will be required to disgorge this amount within nine months of the election. This would allow for 50 days after the election to make the refunds and for six months for contributors to cash, deposit, or otherwise negotiate the refund checks with an additional 40 days to determine the disgorgement amount and send the check to the United States Treasury.

5. 11 CFR 400.54 Notification of Disposal of Excess Contributions

BCRA requires that candidates dispose of excess contributions within 50 days of the election. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4) (*See* Explanation and Justification for new 11 CFR 400.50, above.) BCRA also requires that, in the first regular report after the election, the candidate or the authorized committee report the source and amount of each excess contribution and the manner in which the candidate or the authorized committee used such funds. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). New 11 CFR 400.54 largely tracks the wording of the statute with two modifications. First, rather than requiring that the ''source'' of excess contributions be reported, the new rule requires the ''identification,'' as defined in 11 CFR 100.12, of the contributor of each excess contribution.

The second modification addresses an inconsistency in the statute. While 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) require that excess contributions be disposed of within 50 days of the election, 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives) require that candidates or their authorized committees report the source of each excess contribution and the manner in which it *was used*. Note that the first regular report after a primary election would be the quarterly report for the quarter in which the primary was held, and the first regular report after the general election would be the post-general election report. In the case of a primary election, the next quarterly report may be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run, depending on the date the primary election is held. In the case of a general election, the next regular report after the election, the post-general election report, would most definitely be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run.

To reconcile these two provisions of BCRA, 11 CFR 400.54 requires principal campaign committees to report the identification of the contributors of excess contributions and the manner in which such funds were refunded in the first regular report due *after* the 50 day time for disposing of such funds has expired. For example, in the case of a primary election, the principal campaign committee would have to report the excess contributions and the manner in which they were refunded in the first report that quarterly filers are required to file after the 50-day post-primary time period has elapsed. For example, for a primary on May 31, the principal campaign committee would report the excess funds and the manner in which they were refunded in its third quarterly report rather than its second quarterly report because the 50-day post-primary time period would elapse on July 20, five days after the second quarterly report was due. Thus, the principal campaign committee would report this information with its third quarterly report, due on October 15. Similarly, for the general election, the principal campaign committee would report the excess funds and the manner in which they were refunded not in the post-general report, but rather in the year-end report.

The Commission requests comments on this inconsistency and the Commission's reconciliation, as well as an alternative interpretation. To avoid reading an inconsistency in BCRA, the requirement that authorized committees report the source and amount of excess campaign funds and the manner in which they were ''used'', 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives), could be read as requiring the reporting of whether and, if so, to what extent funds raised under the increased contribution limits were spent. Consequently, the Commission seeks comment on a reading of the foregoing statutory provisions that would require an authorized committee taking advantage of the increased contribution limits to identify in the first report following each election the identity of each contributor of a contribution in excess of the normal limits, the aggregate amount raised and how much of that was spent in connection with the election. It is plausible that Congress intended to capture in a single report the identity of all ''excess'' contributors and the extent to which campaign spending was affected by the increased contribution limits. This reading would resolve the conflict between the requirement to dispose of excess contributions within 50 days under 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) and the reporting of excess contributions, prior to that deadline.

Part 9035—Expenditure Limitations

11 CFR 9035.2 Limitation on Expenditures From Personal or Family Funds

The Commission is changing a cross-reference in 11 CFR 9035.2(c) to the definition of ''personal funds.'' As explained in greater detail above, the Commission is changing the definition of ''personal funds'' in former 11 CFR 110.10 and moving it to 11 CFR 100.33 (*see* Explanation and Justification for former 11 CFR 110.10, above). The new definition of ''personal funds'' in 11 CFR 100.33 applies only to the Commission's rules implementing Title 2 of the U.S. Code, however, and not to the Commission's rules implementing Title 26 of the U.S. Code.

Current 11 CFR 9003.2 includes a definition of ''personal funds'' that is

nearly identical to the definition in former 11 CFR 110.10. Because that definition remains appropriate in the context of the Title 26 regulations, the Commission is adopting the definition of ''personal funds'' in 11 CFR 9003.2 for purposes of 11 CFR 9035.2. Accordingly, rather than changing the cross-reference in 11 CFR 9035.2(c) from former 11 CFR 110.10 to new 11 CFR 100.33, the Commission is changing the cross-reference to the existing Title 26 definition of ''personal funds'' in 11 CFR 9003.2.

Millionaires' Amendment Hypothetical

In an effort to provide a better understanding of the manner in which the various provisions of the Millionaires' Amendment would operate in the context of a primary and general election, the Commission presents the following hypothetical example. All candidates in the following example are fictional and any similarities to past or present candidates or elections for Federal office are purely coincidental. The contribution and coordinated party expenditure limits in the example will probably be different in subsequent years due to indexing for inflation.

Statement of Candidacy

For months, local newspapers had been speculating about the possibility that Frank Rogers, an independently wealthy investment banker from New Franklin was planning to enter the race for the Democratic Party's nomination for the U.S. Senate. Some of Rogers's most ardent supporters had already formed a committee, called the ''Draft Frank Rogers Committee'' and had been soliciting contributions on behalf of his potential candidacy. By February 1, 2003, the Draft Frank Rogers Committee (''Committee'') had received contributions aggregating in excess of $5,000. On February 15, 2003, Rogers received a letter from the Federal Election Commission (''FEC'' or ''Commission'') notifying him of the Committee's efforts on his behalf and informing Rogers that, unless he disavowed the Committee's activities within 30 days of receiving the Commission's notification, the Commission would consider Frank Rogers to be a candidate, under 11 CFR 100.3(a).

On March 3, 2003, Frank Rogers filed a Statement of Candidacy on FEC Form 2 and designated a principal campaign committee by filing a Statement of Organization on FEC Form 1, pursuant to 11 CFR 102.12 and 102.2, respectively. Because Rogers was running for the Senate, he was required to file the original FEC Form 2 and FEC Form 1 with the Secretary of the United States Senate, under 11 CFR 105.2. Rogers noticed that he was also required to send a copy of FEC Form 2 (but not FEC Form 1) to the Commission and to each opposing candidate in the same election, under 11 CFR 400.20.

When he began to fill out the forms, Rogers noticed that they had changed since the last time he had seen them, a year earlier, when he considered but decided against a race for Federal office. In addition to the information Form 2 used to require (name, address, party affiliation, office sought, *etc.*), he was now also required to state a dollar figure representing the amount of his personal funds that he intended to spend on behalf of his campaign in excess of a certain ''threshold amount,'' as defined in 11 CFR 400.9. In addition, the new Form 1 required Rogers' principal campaign committee to provide either its electronic mail address or its facsimile number. Rogers completed Form 1 first and then turned his attention to FEC Form 2.

Rogers retrieved his copy of the Code of Federal Regulations and determined that, for Senate candidates like him, the threshold amount was equal to the sum of $150,000 plus the product of the voting age population of his State (as certified under 11 CFR 110.18) multiplied by $0.04. After looking at 11 CFR 110.18, Rogers realized that, in order to determine the voting age population of New Franklin, he needed to search the **Federal Register** for the most recent voting age population estimate published annually by the Department of Commerce. Considering that the voting age population of New Franklin was listed as 24,800,000, he calculated the threshold amount, as follows:

$150,000 + (24,800,000 × $0.04) = $1,142,000.

Rogers's personal fortune was estimated to be at least $500 million. Frank Rogers had determined that his campaign would need an initial infusion of $7.5 million of his personal funds. Rogers sincerely hoped he would not have to spend any more of his personal funds, but he was willing to spend more if necessary. Thus, on FEC Form 2, Rogers stated his intention to exceed the threshold amount by $6,358,000 ($7,500,000 − $1,142,000 threshold amount). In addition to filing the original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, Rogers faxed a copy of FEC Form 2 to the Commission as required by 11 CFR 400.20. Considering that Rogers was the only candidate in the race at that point, he was not required to fax or e-mail a copy of FEC Form 2 to any opposing candidates.

On March 31, 2003, Arlene Miller announced her intention to oppose Frank Rogers for the Democratic Party's nomination for the U.S. Senate. Although Miller was not nearly as wealthy as Frank Rogers, she stated on her FEC Form 2 that she intended to exceed the threshold amount ($1,142,000) by $1,858,000. This meant that Miller intended to make expenditures from personal funds totaling $3,000,000 ($1,858,000 + $1,142,000 threshold amount). Miller also designated a principal campaign committee on FEC Form 1. Miller filed her original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, faxed a copy of FEC Form 2 to the Commission, and sent an electronic copy of FEC Form 2 to opposing candidate Frank Rogers as an attachment to an e-mail message.

On April 3, 2003, Jim Hyer entered the Democratic primary race. Given his position as Chairman of the New Franklin Democratic Party, Hyer had high name recognition among party activists but almost no money. He was counting on his popularity with the state's Democratic Party activists to carry him to victory in the June 1, 2004, primary election. Within 15 days of becoming a candidate, Hyer filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, and faxed copies of FEC Form 2 to the Commission and to the Rogers and Miller campaigns. On FEC Form 2, Hyer indicated that he did not intend to spend any of his personal funds on the race.

On April 15, 2003, James Rockford, a venture capitalist, announced his intention to seek the Republican Party's nomination for the U.S. Senate. Rockford had made a fortune in the technology boom of the late 1990s (he was worth an estimated $20 billion) and was extremely well known throughout the state for his support of a popular statewide referendum, Proposition 895. At the time that Rockford announced his candidacy, he was the only candidate seeking the Republican Party's nomination. Within 15 days of becoming a candidate, Rockford filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate. On FEC Form 2, Rockford stated that he intended to exceed the threshold amount ($1,142,000) by $148,858,000. This meant that Rockford intended to spend $150 million of his personal funds on the race ($148,858,000 = $150,000,000 − $1,142,000 threshold amount). The same day, Rockford

deposited $50 million in his authorized committee's account and filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate. Given that there were no opposing candidates vying for the Republican nomination, Rockford satisfied his remaining reporting obligations by faxing copies of his FEC Form 2 and FEC Form 10 to the Commission.

Initial Notification of Expenditure From Personal Funds

On April 4, 2003, the day after Hyer entered the race, Rogers immediately pumped $7.5 million of his personal funds into his authorized committee's account. Because $7.5 million was more than two times the threshold amount of $1,142,000, within 24 hours of depositing the funds, Rogers filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate and faxed a copy of the form to the FEC and to the Miller and Hyer campaigns, as required by 11 CFR 400.21, 400.23, and 400.24.

Miller's campaign received Rogers's notification on April 5, 2003. Miller responded by contributing to her authorized committee $3,000,000. Because a contribution from a candidate to the candidate's authorized committee was considered an expenditure of personal funds under 11 CFR 400.4 and because the total contribution amount ($3,000,000) exceeded two times the threshold amount ($2 \times \$1,142,000 = \$2,284,000$), within 24 hours of making the loan, Miller was required to file a notification of expenditures from personal funds on FEC Form 10. On April 6, 2003, Miller filed her original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and to the Rogers and Hyer campaigns.

Miller was aware that once she received Rogers's initial notification, it was possible for her authorized committee to begin receiving contributions from individuals in excess of the usual $2,000 limit. She scrambled to do the necessary calculations to determine the increased limit. According to the procedure outlined in 11 CFR 400.40, Miller first needed to determine the ''opposition personal funds amount,'' the computation of which is explained at 11 CFR 400.10.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Miller quickly noticed that there were three different formulas for calculating the opposition personal funds amount and that the appropriate formula depended on the date of calculation. Because the date was April 7, 2003, she determined that the first formula was the correct one to use because April 7, 2003, was prior to July 16 of the year preceding the year in which the general election was to be held. (The general election was scheduled to be held on November 8, 2004.) According to the formula, the opposition personal funds amount on April 6, 2003 was equal to the greatest aggregate amount of expenditures from personal funds made by her opposing candidate (Rogers) minus the greatest aggregate amount of expenditures from personal funds made by her. Thus, as of April 7, 2003, the opposition personal funds amount was $7,500,000 minus $3,000,000, or $4,500,000. Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Miller returned to the table in 11 CFR 400.10 to continue calculating the increased limit. According to the table, if the opposition personal funds amount ($4,500,000) was greater than the sum of the product of $0.08 times the voting age population of New Franklin (24,800,000) plus $300,000 but less than or equal to the sum of the product of $0.16 times the voting age population of New Franklin (24,800,000) plus $600,000, then her authorized committee may accept three times the ordinary contribution limit of $2,000, or $6,000.

Miller made the following calculations:

($0.08 \times 24,800,000) + \$300,000 = \$2,284,000$

($0.16 \times 24,800,000) + \$600,000 = \$4,568,000.$

Because the opposition personal funds amount ($4,500,000) was between $2,284,000 and $4,568,000, the increased limit for individual contributions to Miller's authorized committee was $6,000 (three times the ordinary limit). According to the table, Miller's national party committee was also able to make coordinated expenditures on behalf of her campaign in connection with the general election. Miller located a copy of the March 2002 FEC Record, which contained a table showing the coordinated party expenditure limits for 2002 Senate nominees. Miller found the amount for New Franklin, $1,781,136, which represented $0.02 times the voting age population of New Franklin (24,800,000), indexed for inflation. Given that her national and State party committees have a policy of not making coordinated expenditures before the primary election when there are multiple candidates vying for the Democratic Party's nomination, Miller knew that she could not count on any assistance from either committee until the general election.

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller was all set to call her closest supporters to begin soliciting $6,000 checks when she suddenly realized that she and her authorized committee were required, under 11 CFR 400.31 to constantly monitor a certain proportion to make sure that the aggregate amount of contributions made under the increased limit never exceeded 110 percent of the opposition personal funds amount ($4,500,000). Miller made the calculation as follows: $1.10 \times \$4,500,000 = \$4,950,000$. She immediately started making calls, realizing that she could accept contributions under the increased limits only until the aggregate amount of such contributions to her campaign equaled $4,950,000.

Calculating the Opposition Personal Funds Amount for the Hyer Campaign

Having received Rogers's initial notification of expenditure from personal funds on April 5, 2003, and Miller's initial notification on April 6, 2003, Hyer set out to determine the increased contribution and coordinated party expenditure limits applicable to his campaign. In order to perform the necessary calculations, Hyer first needed to determine the opposition personal funds amount as of April 5, 2003.

Under 11 CFR 400.10, the opposition personal funds amount prior to June 30 of the year preceding the year in which the general election is held is the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate himself in the same election. Hyer considered for a minute which of the three announced Senate candidates, Rogers, Miller, or Rockford, was his ''opposing candidate,'' for purposes of the formula. He quickly ruled out Rockford because he realized that in the primary election cycle, he and Rockford were not seeking the nomination of the same political party.

Of the two remaining candidates, Hyer concluded that the contribution and coordinated expenditure limits would be much higher if Rogers were the opposing candidate. As of April 6, 2003, the aggregate amount of Rogers's

expenditures from personal funds was $7.5 million while the aggregate amount of Miller's expenditures from personal funds was $3 million. Unlike Arlene Miller, Hyer had not yet made any expenditures from personal funds, so the aggregate amount of his expenditures was $0.00. Plugging these numbers into the formula, Hyer calculated the possible opposition personal funds amounts as follows:

Opposing candidate Rogers: $7,500,000 − $0.00 = $7,500,000

Opposing candidate Miller: $3,000,000 − $0.00 = $3,000,000

Thus, Hyer concluded that it would be to his advantage to consider Rogers to be his ''opposing candidate'' for purposes of determining the opposition personal funds amount. According to his calculations, the applicable opposition personal funds amount as of April 6, 2003, was $7.5 million. Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Hyer Campaign

Hyer proceeded to calculate the increased contribution and coordinated party expenditure limits pursuant to the formulas in 11 CFR 400.40. Doing the necessary calculations according to the formulas in the table (illustrated below), Hyer determined that because the opposition personal funds amount ($7,500,000) was between $4,568,000 and $11,420,000, the increased limit for individual contributions to his campaign was $12,000 (six times the applicable limit ($2,000)).

($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000 = $4,568,000

($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000 = $11,420,000

Hyer also determined that the increased coordinated party expenditure limit applicable to his campaign was $1,781,136 (the greater of $20,000 or $0.02 times the voting age population of the State of New Franklin (24,800,000), as adjusted for inflation). Like Miller, Hyer was well aware of his party committees' policy of not making coordinated expenditures prior to the date of nomination when there was a contested primary.

Calculating the Proportionality Provision Amount for the Hyer Campaign

Before soliciting $12,000 checks, however, Hyer decided it would be wise to figure out the aggregate amount of contributions his committee could accept under the increased limit before it would become necessary, under 11 CFR 400.31, to refuse that portion of contributions made under the increased limit that exceeded the ordinary limit of $2,000. Given that the opposition personal funds amount as of April 6, 2003, was $7,500,000, Hyer made the following calculation: 1.10 × $7,500,000 = $8,250,000. Hyer began fundraising at once, knowing that he could accept contributions under the increased limits only until the aggregate amount all such contributions received by his campaign equaled $8,250,000.

Additional Notification of Expenditure from Personal Funds

Meanwhile, Frank Rogers was starting to flounder. His campaign had already spent the $7.5 million he had deposited on April 4th plus an additional $1,000,000 in contributions his authorized committee had received to date. He decided that, in order to remain competitive with Miller and Hyer, he had no choice but to commit more of his personal funds to the race. So, on June 30, 2003, Rogers deposited an additional $2,500,000 into his authorized committee's account. Because this expenditure from personal funds exceeded $10,000, within 24 hours of depositing the funds, Rogers was required to file an additional notification of expenditure from personal funds on FEC Form 10, under 11 CFR 400.22. As he did with the initial notification, Rogers filed the original form with the Secretary of the Senate, and faxed copies of the form to the FEC and the Miller and Hyer campaigns. Although this amount was in excess of the amount stated on Roger's FEC Form 2, he was *not* required to amend that form.

Calculating the New Opposition Personal Funds Amount for the Miller and Hyer Campaigns

The Miller and Hyer campaigns received Rogers's additional notification of expenditures from personal funds on July 1, 2003. The Miller and Hyer campaigns endeavored to determine how Rogers's increase in spending from personal funds might affect their increased contribution limits. Before figuring out their new limits, however, each campaign first had to recalculate the opposition personal funds amount.

Turning to the formulas in 11 CFR 400.10, each candidate realized that as soon as July 16 the applicable formula would no longer be the one that applied prior to July 16, 2003. With vacations taking many staffers and potential contributors away, both committees elected to wait until the new formulas were in effect before accepting any contributions. Once it was July 16, 2003, which was between July 16 of the year preceding the year in which the general election would be held and February 1 of the year in which the general election would be held, the formula required that the gross receipts advantage be taken into account.

Opposition Personal Funds Amount—Miller Campaign

To calculate the opposition personal funds amounts for the Miller campaign as of July 16, 2003, the following formula had to be used: $a - b - ((c - d) \div 2)$, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the same election;

(c) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Miller Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Miller campaign equaled $10,000,000.

Variable (b)—Miller Campaign

As of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. Thus, as of that date, variable (b) in the formula for Miller's campaign equaled $3,000,000.

Variable (c)—Miller Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (c) in the formula for the Miller

campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Variable (d)—Miller Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Miller campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Miller campaign as of June 30, 2003, was $7,000,000, calculated as follows:

$10,000,000 − $3,000,000 − (($1,000,000 − $1,000,000)/2) = $7,000,000.

Opposition Personal Funds Amount—Hyer Campaign

To calculate the opposition personal funds amounts for the Hyer campaign as of July 16, 2003, the following formula had to be used: a − b − ((c − d) ÷ 2), where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $10,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2002, variable (d) in the formula for the Hyer campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Hyer campaign as of June 30, 2003, was $10,000,000, calculated as follows:

$10,000,000 − $0 − (($1,000,000 − $1,000,000 ÷ 2) = $10,000,000.

Both Miller and Hyer notified their national and state party committees and the Commission of their calculations, as required by 11 CFR 400.30(b).

Calculating the New Contribution Limits for the Miller and Hyer Campaigns

After calculating the new opposition personal funds amount, the Miller and Hyer campaigns recalculated the new individual contribution limits as follows:

Contribution Limit—Miller Campaign

Because the opposition personal funds amount of $7,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Miller determined that the new increased contribution limit for the Miller campaign was:

$12,000 = 6 × $2,000 (the applicable limit).

Contribution Limit—Hyer Campaign

Because the opposition personal funds amount of $10,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Hyer determined that the new increased contribution limit for the Hyer campaign was the same as the old increased contribution limit:

$12,000 = 6 × $2,000 (the applicable limit).

Calculating the New Proportionality Provision Amount for the Miller and Hyer Campaigns

Before calling to solicit contributions under the new increased limits, however, both the Miller and Hyer campaigns sought to determine the maximum amount they could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

Proportionality Provision Amount—Miller Campaign

Taking into account the new opposition personal funds amount ($7,000,000), the Miller campaign determined that the new proportionality provision amount was $7,700,000, calculated as follows:

1.10 × $7,000,000 = $7,700,000

As of July 16, 2003, the Miller campaign had received $4,500,000 in contributions, $1,500,000 from contributors plus the $3,000,000 contribution from Miller's personal funds. Of the $1,500,000, the Miller Committee received $500,000 under the increased limits. Only this $500,000 of her committee's gross receipts counted towards the proportionality provision limit. Accordingly, the Miller campaign determined that it could receive another $7,200,000 ($7,700,000 limit − $500,000 already received) in contributions under the increased limit without violating the proportionality provision.

Proportionality Provision Amount—Hyer Campaign

As of July 16, 2003, the Hyer campaign had received $1,000,000 in contributions, $400,000 of which was received under the increased limits, well short of the old $5,500,000 maximum proportionality provision amount. Taking into account the new opposition personal funds amount

($10,000,000), the Hyer campaign determined that the new proportionality provision amount was $11,000,000, calculated as follows:

1.10 × $10,000,000 = $11,000,000

Accordingly, the Hyer campaign determined that it could receive another $10,600,000 ($11,000,000 limit − $400,000 already received) in contributions under the increased limit without violating the proportionality provision.

Withdrawal of Opposing Candidate

As summer turned into fall and fall faded into winter, the polls consistently showed Miller with a double-digit lead over Rogers. The Hyer campaign polled in the single digits.

Rogers had already spent $10 million of his personal funds and, although willing to spend more, he did not want to do so unless there was a real chance that he might make some headway against Miller. Rogers figured that he could not gain ground against Miller. So, on December 20, 2003, Rogers held a press conference and announced his decision to quit the race.

Once the initial shock of Rogers's withdrawal from the race wore off, both Miller and Hyer realized that his departure might have a significant impact on their ability to raise funds for the last seven months of the primary campaign. Under 11 CFR 400.32, Rogers ceased to be a candidate on December 20, 2003, the date he publicly announced his withdrawal from the race. From that day forward, Miller was prohibited from accepting that portion of contributions made under the increased limits that exceeded the applicable limit ($2,000 per person) because it was Rogers's expenditures from personal funds that had allowed her to receive contributions above the applicable limit in the first place. While her campaign was permitted to continue accepting contributions up to the applicable limit ($2,000 per individual), it would have to refuse any portion of any contribution above the applicable limit. Any amount above the applicable limit would have to be refunded to the contributor.

Calculating the New Opposition Personal Funds Amount for the Hyer Campaign

Rogers's withdrawal from the race affected the Hyer campaign differently than the Miller campaign. With Rogers out of the race, Hyer must now consider Miller to be his ''opposing candidate'' for purposes of calculating the opposition personal funds amount and the increased contribution limits. To determine the new opposition personal funds amount as of December 20, 2003, Hyer used the same formula he had used on July 16, 2003 (a − b − ((c − d) ÷ 2)), substituting Miller for Rogers, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Miller) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $3,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Hyer campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Inserting the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Hyer campaign as of December 20, 2003, was $3,000,000, calculated as follows:

$3,000,000 − $0 − (($1,000,000 − $1,000,000) ÷ 2) = $3,000,000

Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution Limit for the Hyer Campaign

Hyer was optimistic that he would still be able to receive contributions above the applicable limit. Hyer performed the following calculations and determined that with the new opposition personal funds amount of $3,000,000, the new contribution limit applicable to his campaign was three times the applicable limit, or $6,000:

Opposition personal funds amount of $3,000,000 was more than * * *

$2,284,000 = ($0.08 × 24,800,000 (VAP of New Franklin)) + $300,000

But less than or equal to * * *

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

Calculating the New Proportionality Provision Amount for the Hyer Campaign

Before calling to solicit contributions under the new increased limit, however, the Hyer campaign sought to determine the maximum amount he could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

As of December 20, 2003, the Hyer campaign had received $1,200,000 in contributions, $750,000 of which was received under the increased limits. Taking into account the new opposition personal funds amount ($3,000,000), the Hyer campaign determined that the new proportionality provision amount was $3,300,000, calculated as follows:

1.10 × $3,000,000 = $3,300,000

Accordingly, the Hyer campaign determined that it could receive $2,550,000 ($3,300,000 limit − $750,000 already received) in contributions under the increased limit without violating the proportionality provision.

Reporting of Gross Receipts as of December 31, 2003

On January 31, 2004, the principal campaign committees of Arlene Miller, Jim Hyer, and James Rockford filed the reports required under 11 CFR 104.19(b)(2) disclosing gross receipts as of December 31, 2003. Frank Rogers's principal campaign committee did not have to file a report because he had withdrawn from the election.

Arlene Miller's principal campaign committee reported that it had received $6 million in gross receipts in connection with the primary. That $6 million included her $3 million contribution from personal funds. The committee also reported that it had $2 million in gross receipts that could be spent on the general election. This amount came from contributions it had received under the applicable limit that had been designated for the general election. Miller did not make any contribution from personal funds for the general election.

Jim Hyer's principal campaign committee disclosed that it had $1.2 million in gross receipts that could be spent for the primary. He did not make any contribution from personal funds. Additionally, the committee reported that it had no gross receipts for the general election.

James Rockford was a candidate for the Republican nomination for the Senate. His principal campaign committee was also required to file this report. It disclosed that it had received $50.3 million in gross receipts in connection with the primary including a $50 million contribution from Rockford's personal funds. The committee also reported that, as of December 31, 2003, it had $1.1 million in gross receipts for the general election, $1 million of which was a contribution from Rockford's personal funds made on December 15, 2003. The remaining $100,000 of the committee's gross receipts represented contributions from contributors other than Rockford.

The remaining months of the primary campaign were brutal. As the primary election day neared, polls showed Miller and Hyer in a statistical dead heat. On June 1, 2004, Miller received 47% of the vote, Hyer received 43% of the vote, and, despite the fact that he withdrew from the race more than five months before the primary election, 10% of New Franklin's Democratic primary voters wrote in Frank Rogers name. Because neither Miller nor Hyer received 50% or more of the vote, New Franklin law required that a run-off election be held.

The run-off election was scheduled for July 1, 2004. Neither campaign had much money left at this point because both had spent nearly every available dollar on a last-minute advertising blitz. The Miller campaign, however, was in a better position than the Hyer campaign. Whereas Hyer's authorized committee had only $25,000 cash on hand, Miller's authorized committee had $2,075,000 total cash on hand, but only $75,000 was available for the primary run-off. Both candidates wondered whether they were permitted to use any of these funds for the run-off election, though, considering that they were raised in the primary election cycle under the increased contribution limits. They turned to the definition of ''election cycle'' at 11 CFR 400.2, however, and determined that a run-off election was considered to be an extension of the election cycle containing the election that necessitated the run-off election. Thus, the Miller and Hyer campaigns were permitted to use the funds remaining from the primary election for the July 1, 2004, run-off election because the July 1, 2004, run-off was considered to be part of the June 1, 2004, primary election cycle.

On July 1, 2004, Arlene Miller won the run-off election and prepared to face off against James Rockford in the general election. Rockford ran unopposed in the Republican primary and managed to secure the Republican Party's nomination without spending more than $1 million of his personal funds. After winning the Republican endorsement, Rockford's authorized committee refunded the remaining $49 million to the candidate. (His contribution on December 15th of $1 million was for the general election.) Miller's authorized committee was completely out of primary cash by the time the run-off election ended.

General Election Campaign

The general election cycle got off to a raucous start. On July 2, 2004, Rockford used his own funds to purchase $20 million in air time, locking up key commercial slots in every major media market in the state through Labor Day. As required by 11 CFR 400.21, within 24 hours of executing the air time contract, Rockford filed an initial notification of expenditures from personal funds on FEC Form 10. He filed the original form with the Secretary of the Senate and faxed copies to the Commission and the Miller campaign.

When Miller received Rockford's initial notification on July 3, 2004, she scrambled to determine the opposition personal funds amount, under 11 CFR 400.10, and the increased contribution and party expenditure limits under 11 CFR 400.40.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation was on or after December 31 of the year preceding the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) (a − b − ((e − f) ÷ (2)), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($21 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds (Note: This amount is $0, because the $3 million Miller contributed to her authorized committee on April 5, 2003 was made in connection with the primary and entirely spent), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003, so the July 2, 2004, $20 million expenditure is *not* included.

Miller determined the value of each variable as follows:

(a) = $21,000,000
(b) = $0.00
(e) = $2,000,000 ($2,000,000 − $0)
(f) = $100,000 ($1,100,000 − $100,000)

Inserting these above values into the applicable formula (a − b − ((e − f) ÷ (2)), Miller determined that the opposition personal funds amount was $20,050,000, calculated as follows:

$21,000,000 − $0 − (($2,000,000 − $100,000) ÷ (2) = $20,050,000

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller campaign

Having determined that the opposition personal funds amount was $20,050,000, Miller determined that, because the opposition personal funds

amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit

Unlimited

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($20,050,000), under 11 CFR 400.31:

1.10 × $20,050,000 = $22,055,000

Miller started raising money in earnest. By the end of July, her campaign had managed to raise $4,500,000, $2,300,000 of which was received under the increased limits. In addition, sometime in the middle of the month, someone from the DSCC called to say they had not made any independent expenditures on her behalf, and wanted to make coordinated party expenditures to help her out. The DSCC official wanted to know what sort of help Miller needed most. Miller told the DSCC official that her campaign desperately needed air time in all of New Franklin's major media markets in order to compete with Rockford. The DSCC immediately purchased as much air time as was available between July 15, 2004, and Labor Day. The DSCC notified Miller that the total cost of the air time that the DSCC purchased on Miller's behalf was $19,753,000 above the coordinated party expenditure limit. Although the New Franklin State Democratic Committee could also spend above the ordinarily-applicable $1,781,136 coordinated party spending limit, Miller was told they planned to make no coordinated party expenditures on her behalf.

On August 1, 2004, Arlene Miller received a telephone call from Rex Duncan, an old college friend. Duncan said that he knew Miller was running against a self-financed candidate and he wanted to send her a contribution but he wasn't sure how much he was allowed to give. Duncan explained that, since Election Day 2002, he had made a number of contributions to other Federal candidates. As of August 1, 2004, the aggregate amount of Duncan's contributions was $35,500, just $2,000 shy of the aggregate 2-year limit of $37,500 for individual contributions to Federal candidate committees under 2 U.S.C. 441a(a)(3)(A). He asked Miller how much he would be allowed to contribute to her campaign. Miller informed Duncan that only the first $2,000 of his contribution to any one Federal candidate counted against his 2-year aggregate limit, pursuant to 11 CFR 400.42. Any amount above the applicable limit given to candidates running against self-financing candidates was excluded from the calculation.

Nevertheless, Miller suspected that Duncan could not send her $12,000, however, because she knew that her campaign was getting close to a crucial limit of its own under the proportionality provision. Miller told Duncan that she would have to call him back after she figured out how much of his money her campaign could legally accept. Miller calculated the aggregate amount of contributions already received and coordinated party expenditures already made under the increased limits, as follows: $2,300,000 (contributions) + $19,753,000 (coordinated expenditures) = $22,053,000.

After performing these calculations, Miller realized that she could only accept $2,000 from Duncan above the applicable limit of $2,000. This meant that her campaign could accept a check from Duncan in the amount of $4,000 because, although the first $2,000 of his contribution *would* count against his 2-year aggregate limit of $37,500, it *would not* count against the Miller campaign's proportionality provision limit of $22,055,000. Miller called Duncan back and asked him to send her a check for $4,000.

Realizing that, under 11 CFR 400.31(d)(1)(ii), Miller or her authorized committee was required to notify the national and State committees of her political party and the Commission within 24 hours of the time her campaign reached the proportionality provision limit, Miller immediately sent electronic mail messages to the DSCC, the New Franklin Democratic Federal Campaign Committee, and the Commission. Both committees were now on notice that they could no longer make coordinated expenditures on behalf of Miller's general election campaign in excess of the coordinated expenditure limitation in 11 CFR 109.32(b).

Miller realized that, unless Rockford spent more of his personal funds on behalf of his campaign, from that point forward, her campaign could only accept contributions up to the applicable limit ($2,000 per individual). In addition, the national party committee would be prohibited from making any more coordinated expenditures on behalf of the Miller campaign, although it could still contribute up to $35,000 directly to her principal campaign committee.

On August 3, 2004, Rockford reluctantly used his personal funds to purchase $30 million worth of air time between Labor Day and Election Day. Disappointed that he was again using personal funds, Rockford deemed $20 million a contribution and $10 million a personal loan. As required, Rockford filed his original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and the Miller campaign. Miller scrambled to recalculate the new opposition personal funds amount and increased contribution and coordinated party expenditure limits.

Calculating the New Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation (August 4, 2004) was on or after February 1 of the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) (a − b − ((e − f) ÷ 2)), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($51 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds ($0), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003.

Miller determined the value of each variable as follows:

(a) = $51,000,000

(b) = $0

(e) = $2,000,000 ($2,000,000 − $0)

(f) = $100,000 ($1,100,000 − $1,000,000)

Plugging these values into the applicable formula, Miller determined that the opposition personal funds amount was $45,750,000, calculated as follows:

$51,000,000 − $0 − (($2,000,000 − $100,000) ÷ 2) = $50,050,000

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Having determined that the opposition personal funds amount was $50,050,000, Miller determined that, because the opposition personal funds amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit—Miller campaign

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit—Miller campaign

Unlimited

Calculating the New Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($45,750,000), under 11 CFR 400.31:

1.10 × $50,050,000 = $55,055,000

As of August 4, 2004, the aggregate amount of contributions received under the increased limits (including Duncan's $2,000) and coordinated party expenditures made under the increased limits equaled $22,055,000. Accordingly, Miller's campaign could now receive an additional $33,000,000 ($55,055,000 − $22,055,000) in contributions and/or coordinated party expenditures. Miller immediately called her old friend Rex Duncan and told him that he could now send her campaign an additional $8,000 if he still wished to support her. Miller then received a call from a multicandidate political committee (PAC) wanting to know how much it could contribute to her campaign. She told the PAC's treasurer that she could accept up to $5,000, as the PAC's contribution limits had not been raised.

Prohibition on Redesignation of Contributions Received Above the Applicable Limit to Another Election Cycle

When the election was over, Miller's authorized committee had $50,000 in contributions accepted under the increased limit left in its campaign account. Looking ahead to the 2010 primary and general elections, Miller wondered whether it would be possible to redesignate the $50,000 to a future race, in the manner prescribed under 11 CFR 110.1(b)(5). Miller quickly determined, however, that redesignation of contributions received under the increased limits was strictly prohibited, under 11 CFR 400.52.

Disposal of Excess Contributions Received Above the Applicable Limit

Miller was puzzled about what her authorized committee was supposed to do with the extra $50,000 in contributions her committee had received during the general election cycle. Under 11 CFR 400.51, Miller's authorized committee was required to refund the excess contributions within 50 days of the general election. Miller's committee refunded the $50,000 in excess contributions to those individuals who had made increased contributions during the general election cycle, being careful to make sure that no individual contributor received a refund that exceeded the aggregate amount of their contributions to the Miller campaign, pursuant to 11 CFR 400.53.

Miller's committee was required to notify the Commission about the disposition of these excess contributions under 11 CFR 400.54. Information about the source and amount of these excess contributions and the manner in which the committee used the funds had to be included in the first report that was due more than 50 days after the general election. According to the regulation, the report had to be submitted with Miller's FEC Form 3. Miller noted that the first report due more than 50 days after the November 8, 2004, general election was not the post-general report, which was due on December 8, 2004, but the year-end report, due on January 31, 2005.

Repayment of Rockford's Personal Loan

Rockford's authorized committee spent every available dollar on the general election campaign and, after the election was over, had no funds remaining to repay Rockford's $10 million personal loan. Rockford wondered whether his authorized committee could use funds raised after the date of the election to repay the loan. He quickly realized, however, that BCRA set a limit on the amount of personal loans that may be repaid with funds raised after the end of an election cycle. The Commission's regulation at 11 CFR 116.11, implementing the new statutory limit, prohibited Rockford from using more than $250,000 in contributions received after the date of the election to pay off his $10 million personal loan. *See* 2 U.S.C. 441a(j). This meant, of course, that Rockford would never be able to recover the remaining $9,750,000 ($10,000,000 personal loan − $250,000 limit) he lent his authorized committee during the general election cycle.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached interim final rules will not have a significant economic impact on a substantial number of small entities. Although the interim final rules add new substantive provisions to the current regulations, those provisions, which are mandated by BCRA, generally represent a relaxation of current limitations on contributions to candidates for Federal office in certain, specified circumstances. Therefore, the attached interim final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 400

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the Explanation and Justification, the Commission amends Subchapters A, C, and E of Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. In § 100.19, paragraph (b) is revised, and paragraph (g) is added to read as follows:

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

* * * * *

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (g) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

* * * * *

(g) *Candidate notifications of expenditures from personal funds.* A candidate's notification of expenditures from personal funds under 11 CFR 400.21 or 400.22 is timely filed if it is received by facsimile machine or electronic mail by each of appropriate parties as set forth in 11 CFR 400.21 and 400.22 within 24 hours of the time the threshold amount as defined in 11 CFR 400.9 is exceeded and within 24 hours of the time expenditures from personal funds are made under 11 CFR 400.21 and 400.22.

3. Section 100.33 is added to read as follows:

§ 100.33 Personal funds.

Personal funds of a candidate means the sum of all of the following:

(a) *Assets.* Amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had—

(1) Legal and rightful title; or

(2) An equitable interest;

(b) *Income.* Income received during the current election cycle, as defined in 11 CFR 400.2, of the candidate, including:

(1) A salary and other earned income that the candidate earns from bona fide employment;

(2) Income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments;

(3) Bequests to the candidate;

(4) Income from trusts established before the beginning of the election cycle as defined in 11 CFR 400.2;

(5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, as defined in 11 CFR 400.2; and

(7) Proceeds from lotteries and similar legal games of chance; and

(c) *Jointly owned assets.* Amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse as follows:

(1) The portion of assets that is equal to the candidate's share of the asset under the instrument of conveyance or ownership; provided, however,

(2) If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

4. The authority for part 101 continues to read as follows:

Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

5. Section 101.1(a) is revised to read as follows:

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual's name and address, party affiliation, and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee at the place of filing specified at 11 CFR part 105). Candidates for the Senate and the House of Representatives must also state, on their Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file electronically under 11 CFR 104.18, on his or her letter containing the same information), the amount by which the candidate intends to exceed the threshold amount as defined in 11 CFR 400.9. Each principal campaign committee shall register, designate a depository, and report in accordance with 11 CFR parts 102, 103, and 104.

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

6. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

7. In § 102.2, paragraph (a)(1) is amended by:

a. Removing the ''and'' at the end of paragraph (a)(1)(vi);

b. Removing the ''.'' at the end of paragraph (a)(1)(vii) and replacing it with ''; and''; and

c. Adding new paragraph (a)(1)(viii) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433 (b), (c)).

* * * * *

(a) * * * (1) * * *

(viii) If the committee is a principal campaign committee of a candidate for the Senate or the House of Representatives, the principal campaign committee's facsimile number, if available, and electronic mail address.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

8. The authority citation for part 104 is revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

9. Section 104.19 is revised to read as follows:

§ 104.19 Special reporting requirements for principal campaign committees of candidates for election to the United States Senate or United States House of Representatives.

(a) *Scope.* The principal campaign committees of candidates for elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress must file reports required under this section with the Commission.

(b) *Timing and contents of reports.*

(1) By July 15 of the year preceding the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election that have been received by June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(1)(i) of this section minus the aggregate amount described in paragraph (b)(1)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(1)(ii) of this section minus the aggregate amount described in paragraph (b)(1)(iv) of this section.

(2) By January 31 of the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(2)(i) of this section minus the aggregate amount described in paragraph (b)(2)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(2)(ii) of this section minus the aggregate amount described in paragraph (b)(2)(iv) of this section.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

10. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

11. In § 110.1, paragraph (b)(3)(ii) is amended by:

a. Removing the ''and'' at the end of paragraph (b)(3)(ii)(A);

b. Removing the ''.'' at the end of paragraph (b)(3)(ii)(B) and replacing it with ''; and''; and

c. Adding new paragraph (b)(3)(ii)(C) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) The amount of personal loans, as defined in 11 CFR 116.11(b), that in the aggregate exceed $250,000 per election.

* * * * *

12. Section 110.10 is revised to read as follows:

§ 110.10 Expenditures by candidates.

Except as provided in 11 CFR parts 9001, *et seq.* and 9031, *et seq.*, candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR 100.33.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

13. The authority citation for part 116 continues to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

14. Part 116 is amended by adding new §§ 116.11 and 116.12 to read as follows:

§ 116.11 Restriction on an authorized committee's repayment of personal loans exceeding $250,000 made by the candidate to the authorized committee.

(a) For purposes of this part, personal loans mean a loan or loans, including advances, made by a candidate, using personal funds, as defined in 11 CFR 100.33, to his or her authorized committee where the proceeds of the loan were used in connection with the candidate's campaign for election. Personal loans also include loans made to a candidate's authorized committee that are endorsed or guaranteed by the candidate or that are secured by the candidate's personal funds.

(b) For personal loans that, in the aggregate, exceed $250,000 in connection with an election, the authorized committee:

(1) May repay the entire amount of the personal loans using contributions to the candidate or the candidate's authorized committee provided that those contributions were made on the day of the election or before;

(2) May repay up to $250,000 of the personal loans from contributions made to the candidate or the candidate's authorized committee after the date of the election; and

(3) Must not repay, directly or indirectly, the aggregate amount of the

personal loans that exceeds $250,000, from contributions to the candidate or the candidate's authorized committee if those contributions were made after the date of the election.

(c) If the aggregate outstanding balance of the personal loans exceeds $250,000 after the election, the authorized political committee must comply with the following conditions:

(1) If the authorized committee uses the amount of cash on hand as of the day after the election to repay all or part of the personal loans, it must do so within 20 days of the election.

(2) Within 20 days of the election date, the authorized committee must treat the portion of the aggregate outstanding balance of the personal loans that exceeds $250,000 minus the amount of cash on hand as of the day after the election used to repay the loan as a contribution by the candidate.

(3) The candidate's principal campaign committee must report the transactions in paragraphs (c)(1) and (c)(2) of this section in the first report scheduled to be filed after the election pursuant to 11 CFR 104.5(a) or (b).

(d) This section applies separately to each election.

§ 116.12 Repayment of candidate loans of $250,000 or less.

(a) A candidate's authorized committee may repay to the candidate a personal loan, as defined in 11 CFR 116.11(a), of up to $250,000 where the proceeds of the loan were used in connection with the candidate's campaign for election. The repayment may be made from contributions to the candidate or the candidate's authorized committee at any time before, on, or after the date of the election.

(b) This section applies separately to each election.

(c) Nothing in this section shall supersede 11 CFR 9035.2 regarding the limitations on expenditures from personal funds or family funds of a presidential candidate who accepts matching funds.

15. Subchapter C is amended by adding part 400 to read as follows:

PART 400—INCREASED LIMITS FOR CANDIDATES OPPOSING SELF-FINANCED CANDIDATES

Subpart A—Scope and Definitions

Sec.

400.1 Scope and effective date.
400.2 Election cycle.
400.3 Opposing candidate.
400.4 Expenditure from personal funds.
400.5 Applicable limit.
400.6 Increased limit.
400.7 Contribution that exceeds the applicable limit.
400.8 Gross receipts.
400.9 Threshold amount.
400.10 Opposition personal funds amount.

Subpart B—Notification and Reporting Requirements

400.20 Declaration of intent.
400.21 Initial notification of expenditures from personal funds.
400.22 Additional notification of expenditures from personal funds.
400.23 Contents of notifications of expenditures from personal funds.
400.24 Methods of filing notifications.
400.25 Reporting obligations of candidates and candidates' principal campaign committees.

Subpart C—Determining When the Increased Limits Apply

400.30 Receipt of notification of opposing candidate's expenditures from personal funds.
400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.
400.32 Effect of the withdrawal of an opposing candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

400.40 Calculating the increased limits for Senate elections.
400.41 Calculating the increased limits for House of Representatives elections.
400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

Subpart E—Disposal of Excess Contributions

400.50 Definition of Excess contributions.
400.51 Relation of excess contributions to the election in which they are made.
400.52 Prohibition against redesignation of excess contributions.
400.53 Disposal of excess contributions.
400.54 Notification of disposal of excess contributions.

Authority: 2 U.S.C. 431, 434(a)(6), 438(a)(8), 441a(i), 441a(j), 441a–1.

Subpart A—Scope and Definitions

§ 400.1 Scope and effective date.

(a) *Introduction.* This part applies to elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted increased limits to allow response to certain expenditures from personal funds by an opposing candidate. This part does not apply to elections to the Office of President or Vice President of United States.

(b) *Effective dates.* Except as otherwise specifically provided in this part, this part shall take effect on February 26, 2003.

§ 400.2 Election cycle.

(a) For purposes of this part, *election cycle* means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat.

(b) For purposes of paragraph (a) of this section, a primary election and a general election are considered to be separate election cycles.

(c) For purposes of this part, a run-off election is considered to be part of the election cycle of the election necessitating the run-off election.

§ 400.3 Opposing candidate.

(a) For purposes of a primary election, *opposing candidate* means another candidate seeking the nomination of the same political party for election to the office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a primary election may have more than one opposing candidate.

(b) For purposes of a general election, *opposing candidate* means another candidate seeking election to the same office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a general election may have more than one opposing candidate.

§ 400.4 Expenditure from personal funds.

(a) *Expenditure from personal funds* means the aggregation of all the following:

(1) An expenditure made by a candidate, using the candidate's personal funds, for the purpose of influencing the election in which he or she is a candidate;

(2) A contribution or loan made by a candidate to the candidate's authorized committee, using the candidate's personal funds (*see* 11 CFR 100.33 for definition of *personal funds*);

(3) A loan by any person to the candidate's authorized committee that is secured using the candidate's personal funds. (*see* 11 CFR 100.33 for definition of *personal funds*); and

(4) Any obligation to make an expenditure from personal funds that is legally enforceable against the candidate.

(b) An expenditure from personal funds shall be considered to be made on the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, under 11 CFR 103.1 and 11 CFR 103.2, on the date the instrument transferring the funds is signed, or on

the date the contract obligating the personal funds is executed, whichever is earlier.

§ 400.5 Applicable limit.

Applicable limit means the contribution amount limitation set forth in 11 CFR 110.1(b)(1).

§ 400.6 Increased limit.

Increased limit means a contribution amount limitation that applies to a person other than a multicandidate political committee that, pursuant to this part, exceeds the applicable limit specified in 11 CFR 110.1 in order to allow response to expenditures from an opposing candidate's personal funds. *Increased limit* also means, where applicable, a suspension, pursuant to this part, of the limitations on expenditures by a national or State political party committee in connection with the general election campaign of a candidate for the Senate or the House of Representatives under 11 CFR 109.32(b).

§ 400.7 Contribution that exceeds the applicable limit.

Amount of contribution above the applicable limit means the difference between the amount of a contribution accepted under this part and the applicable limit.

§ 400.8 Gross receipts.

Gross receipts means the sum of all receipts of the candidate's authorized committee described in 11 CFR 104.3(a)(3) (i) through (x).

§ 400.9 Threshold amount.

(a) *Senate.* For an election to the office of United States Senator, *threshold amount* means the sum of $150,000 plus an amount equal to the voting age population of the State multiplied by $0.04. As used in this paragraph, voting age population means the voting age population of the State of the candidate as certified under 11 CFR 110.18.

(b) *House of Representatives.* For an election to the office of Representative in, or Delegate or Resident Commission to, the Congress, *threshold amount* means $350,000.

§ 400.10 Opposition personal funds amount.

(a) To compute the *opposition personal funds amount*, one of the following formulas must be used, depending on the date of the computation. The variables used in the formulas are defined in paragraph (b) of this section.

(1) To compute the opposition personal funds amount prior to July 16 of the year preceding the year in which the general election is held, the following formula must be used:

opposition personal funds amount = $a - b$.

(2) To compute the opposition personal funds amount from July 16 of the year preceding the year in which the general election is held to January 31 of the year in which the general election is held, one of the following formulas must be used:

(i) If $c > d$, opposition personal funds amount = $a - b - ((c - d) \div 2)$.

(ii) If $c \leq d$, opposition personal funds amount = $a - b$.

(3) To compute the opposition personal funds amount from February 1 of the year in which the general election is held to the day of the general election, one of the following formulas must be used:

(i) If $e > f$, opposition personal funds amount = $a - b - ((e - f) \div 2)$.

(ii) If $e \leq f$, opposition personal funds amount = $a - b$.

(b) *Variables.* The variables used in the formulas set out in paragraph (a) of this section are defined as follows:

a = Greatest aggregate amount of expenditures from personal funds made by the opposing candidate in the same election.

b = Greatest aggregate amount of expenditures from personal funds made by the candidate in the same election.

c = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

d = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

e = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

f = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

Subpart B—Notification and Reporting Requirements

§ 400.20 Declaration of intent.

(a) *Senate and House of Representatives.*

(1) *When and where filed.* Within 15 days of becoming candidate, the candidate must file a Declaration of Intent with the Commission and with each opposing candidate.

(2) *Contents of declaration.* The Declaration of Intent must state the total amount of expenditures from personal funds that the candidate intends to make with respect to the election that will exceed the threshold amount as defined in 11 CFR 400.9. A candidate who does not intend to make expenditures from personal funds that will exceed the threshold amount as defined in 11 CFR 400.9 may state the amount as $0.

(b) *Methods of filing.*

(1) *Senate.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) The candidate must send a copy of his or her Statement of Candidacy to the Commission using a facsimile machine or electronic mail in addition to filing his or her official copy of the Statement of Candidacy on paper with the Secretary of the Senate. The candidate must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which the candidate intends to exceed the threshold amount, to each opposing candidate.

(2) *House of Representatives.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) FEC Form 2 must be filed electronically in accordance with 11 CFR 104.18 if the candidate intends to exceed the threshold amount defined in 11 CFR 400.9(b). Candidates must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which he or she intends to exceed the threshold amount, to each opposing candidate.

§ 400.21 Initial notification of expenditures from personal funds.

(a) *Senate.* A candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed two times the threshold amount as defined in 11 CFR 400.9. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditure is made.

(b) *House of Representatives.* A candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed the $350,000 threshold amount (*see* 11 CFR 400.9). Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditure is made.

§ 400.22 Additional notification of expenditures from personal funds.

(a) *Senate.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditures are made.

(b) *House of Representatives.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditures are made.

§ 400.23 Contents of notifications of expenditures from personal funds.

Each notification filed under 11 CFR 400.21 and 400.22 must contain the following information:

(a) The name of the candidate making the expenditures from personal funds.

(b) The office sought by the candidate making the expenditures from personal funds, including the State and, for candidates for the House of Representatives, the District.

(c) The date and amount of each expenditure from personal funds made since the last notification filed pursuant to 11 CFR 400.21 or 400.22.

(d) The total amount of expenditures from personal funds the candidate has made (as defined in 11 CFR 400.4(e)) in connection with the election from the beginning of the election cycle to the date of the expenditure that is the reason for the notification.

§ 400.24 Methods of filing notifications.

(a) *Senate.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(a) and 400.22 must be filed with the Secretary of the Senate on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required in 11 CFR 400.23 to the Commission and to each opposing candidate.

(b) *House of Representatives.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(b) and 400.22 must be filed with the Commission electronically on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 to each opposing candidate and to the national party committee of each opposing candidate by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required by 11 CFR 400.23.

§ 400.25 Reporting obligations of candidates and candidates' principal campaign committees.

Candidates must ensure that their principal campaign committees file all reports required under this part in a timely manner.

Subpart C—Determining When the Increased Limits Apply

§ 400.30 Receipt of notification of opposing candidate's expenditures from personal funds.

(a) *Applicable to Senate and to House of Representatives elections.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Candidates and authorized committees.*

(1) The candidate and the candidate's authorized committee must not accept, pursuant to this part, any contribution that exceeds the applicable limit, as defined in 11 CFR 400.7, until the candidate has received actual or constructive notification of an opposing candidate's expenditures from personal funds under subpart B of this part. The candidate and the candidate's authorized committee must calculate the opposition personal funds amount each time they receive an opposing candidate's notification of expenditures from personal funds under 11 CFR 400.21 or 400.22.

(2) Upon calculating the opposition personal funds amount, if the candidate or the candidate's authorized committee determines that such amount exceeds the appropriate threshold under 11 CFR 400.40 or 400.41 that permits national and State committees of political parties to make coordinated party expenditures that exceed the limitations set forth in 11 CFR 109.32, the candidate or the candidate's authorized committee must inform the Commission and the national and State committee of their political party of such opposition personal funds amount by facsimile machine or electronic mail within 24 hours of receipt of an opposing candidate's initial or additional notification of expenditure from personal funds.

(c) *Political party committees.* (1) A national or State committee of a political party (including a national Congressional campaign committee) must not make, pursuant to this part, coordinated party expenditures in connection with the general election campaign of a candidate in excess of the limits set forth in 11 CFR 109.32(b) until

the political party committee has received actual or constructive notification under subpart B of this part and the opposition personal funds amount under paragraph (b) of this section indicating that the opposing candidate's expenditures from personal funds exceeds the applicable threshold amount set forth in 11 CFR 400.40 or 400.41.

(2) If the national or State committee of a political party makes coordinated party expenditures in excess of the limitations set forth in 11 CFR 109.32 pursuant to this part, the national or State committee of a political party must inform the Commission and the candidate on whose behalf such expenditure is made, or the candidate's authorized committee, of the amount of such expenditures by facsimile machine or electronic mail within 24 hours of making such expenditures.

(d) *Constructive notification.* For purposes of this section, *constructive notification* means that the candidate, the candidate's authorized committee, or the national or State committee of the political party obtains a copy of the FEC Form 10 received by the Commission.

§ 400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.

(a) *Applicability.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Persons with responsibilities under this section.* A candidate and the candidate's authorized committee that accepts contributions under the increased limits pursuant to this part, and any national or State political party committee (including a national Congressional campaign committee) that makes coordinated party expenditures on behalf of the candidate under the increased expenditure limits pursuant to this part, must comply with this section.

(c) *Information to be monitored.* Any person described in paragraph (b) of this section must monitor all of the following amounts while accepting contributions, or making coordinated party expenditures, respectively, under the increased limits:

(1) The aggregate amount of contributions previously accepted by the candidate and the candidate's authorized committee under the increased limits.

(2) The aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits.

(3) The opposition personal funds amount related to each opposing candidate.

(d) *Senate elections*— (1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 110% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 110% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile or electronic mail, of this information within 24 hours of reaching 110% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 110% of the opposition personal funds amount.

(e) *House of Representatives elections*—(1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 100% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 100% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, of this information within 24 hours of reaching 100% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 100% of the opposition personal funds amount.

§ 400.32 Effect of the withdrawal of an opposing candidate.

(a) *Applicability.* (1) This section applies to all elections covered by this part.

(2) This section applies when an opposing candidate, whose expenditures from personal funds allowed another candidate the benefit of increased limits pursuant to this part, ceases to be a candidate. For purposes of this section, an opposing candidate ceases to be a candidate as of the earlier of the following dates:

(i) The date on which the opposing candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or,

(ii) The date on which the opposing candidate is, or becomes, ineligible for nomination or election to that office by operation of law.

(b) *Candidates.* A candidate and a candidate's authorized committee must not accept any contribution under the increased limits, pursuant to this part, to the extent that such increased limit is attributable to the opposing candidate who has ceased to be a candidate.

(c) *Party committees.* The national and State political party committees must not make any coordinated party expenditure in excess of the limits in 11 CFR 109.32(b), pursuant to this part, to the extent that such increased limit is attributable to an opposing candidate who has ceased to be a candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

§ 400.40 Calculating the increased limits for Senate elections.

(a) *Applicability.* This section applies to candidates for election to the office of United States Senator.

(b) *Procedure.* To calculate the increased limits:

(1) Determine the opposition personal funds amount, as defined in 11 CFR 400.10.

(2) Determine the voting age population (VAP) of the State of the candidate, as defined in 11 CFR 110.18.

(3) Based on the opposition personal funds amount and the VAP, use the following table to determine the increased limits:

If the opposition personal funds amount is more than—	But less than or equal to—	The increased limit for contributions by individuals is—	The amount limitation on coordinated party committee expenditures is—
(i)($0.08 × VAP) + $300,000	($0.16 × VAP) + $600,000	3 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(ii)($0.16 × VAP) + $600,000	($0.40 × VAP) + $1,500,000	6 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(iii)($0.40 × VAP) + $1,500,000		6 × applicable limit	The limitation set forth in 11 CFR 109.32 (b) does not apply subject to the provisions of 11 CFR 400.31(d).

§ 400.41 Calculating the increased limits for House of Representatives elections.

(a) *Applicability.* This section applies to candidates for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress.

(b) *Increased limits.* Subject to subpart C of this part, if the opposition personal funds amount exceeds the threshold amount, $350,000, the following will apply:

(1) The increased limit for contributions by individuals is three times the applicable limit.

(2) The national and State party committee expenditure limitation under 11 CFR 109.32(b) on behalf of the candidate will not apply subject to the provisions of 11 CFR 400.31(e).

§ 400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

(a) This section shall apply to all elections covered by this part.

(b) The portions of contributions made under the increased limits pursuant to this part that, when aggregated with previous contributions made by the same individual to the candidate or the candidate's authorized committee in the same election cycle, exceed the contribution limits in 11 CFR 110.1 shall not be aggregated with other contributions made by that same individual for purposes of applying the aggregate contribution limitations for individuals under 11 CFR 110.5. This paragraph (b) applies only to such contributions that are accepted during the period in which the candidate may accept contributions under the increased limits.

(c) Individual contributors who have reached their aggregate bi-annual contribution limitations to candidates and authorized committees of candidates under 11 CFR 110.5(b)(1)(i) may make contributions under this part if:

(1) The candidate who accepts the contribution may accept contributions that exceed the applicable limit under this part; and

(2) The amount of the contribution, when aggregated with other contributions made under this paragraph (c), does not exceed the amount that the candidate described in paragraph (c)(1) of this section may accept under this part *minus* the applicable limit.

Subpart E—Disposal of Excess Contributions

§ 400.50 Definition of excess contributions.

For purposes of this subpart, excess contributions mean contributions that are made under the increased limit, as defined in 11 CFR 400.6 in subpart B of this part, but not expended in connection with the election to which they relate.

§ 400.51 Relation of excess contributions to the election in which they are made.

(a) *Primary elections.* If the excess contributions were received during the primary election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the primary election in accordance with 11 CFR 400.53.

(b) *General elections.* If the excess contributions were received during the general election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the general election in accordance with 11 CFR 400.53.

(c) *Run-off elections.* For purposes of this section only, when a primary or general election results in a run-off election, the run-off election is considered part of the respective primary or general election. Notwithstanding paragraphs (a) and (b) of this section, the candidate's authorized committee must refund the excess contributions within 50 days of the run-off election in accordance with 11 CFR 400.53.

§ 400.52 Prohibition against redesignation of excess contributions.

(a) The candidate's authorized committee shall not redesignate or seek redesignation of excess contributions under 11 CFR 110.1(b)(5).

(b) Once an individual has made a contribution under the increased limits, the individual must not redesignate the contribution for another election.

§ 400.53 Disposal of excess contributions.

(a) The candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under this part. The refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle.

(b) The amount of any refund checks, made under paragraph (a) of this section that are not cashed, deposited, or otherwise negotiated within 6 months of the date of the refund check must be disgorged to the United States Treasury. The candidate's authorized committee must disgorge this amount to the United States Treasury within nine months of the election.

§ 400.54 Notification of disposal of excess contributions.

The candidate's principal campaign committee shall submit to the Commission information indicating the source and amount of any excess contributions (*see* 11 CFR 400.50) and the manner in which the candidate, the candidate's principal campaign committee, or the candidate's authorized committee refunded such funds. This information shall be included in the first report that the principal campaign committee is required to file, under 11 CFR 104.5, the date of which falls more than 50 days after the election for which a candidate seeks nomination for election to, or election to, Federal office. Such report must be submitted with the candidate's FEC Form 3.

PART 9035—EXPENDITURE LIMITATIONS

16. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

17. In section 9035.2, paragraph (c) is revised to read as follows:

§ 9035.2 Limitation on expenditures from personal or family funds.

* * * * *

(c) For purposes of this section, *personal funds* has the same meaning as specified in 11 CFR 9003.2.

Dated: January 17, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–1546 Filed 1–24–03; 8:45 am]

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Federal Register

Monday,

January 27, 2003

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7443–4]

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This action lists three substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject either to narrowed use limits or use conditions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment.

In this Direct Final Rulemaking (FRM), EPA is issuing its decision on the acceptability of three halon substitutes in the fire suppression and explosion protection sector. EPA is issuing a companion proposal to this direct final rule elsewhere in today's **Federal Register**. If we receive any adverse comments, EPA will withdraw this direct final action and will consider and respond to any comments prior to taking any new, final action.

DATES: This rule is effective on March 28, 2003, without further notice, unless EPA receives adverse comment or receives a request for a public hearing by February 26, 2003. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send your comments and data specific to this final rule to Docket A–2002–08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20004. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. You may inspect the docket between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 566–1742; fax (202) 566–1741. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, send a second copy of your comments directly to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT**. Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Bella Maranion at (202) 564–9749 or fax (202) 565–2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 Third Street NW., 4th floor, Washington, DC, 20001. Also contact the Stratospheric Protection Hotline at (800) 296–1996 and EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/index.html.*

SUPPLEMENTARY INFORMATION: In this direct final rule, EPA adds three fire suppression agents to the list of acceptable substitutes, subject to either narrowed use limits or use conditions. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that have had restrictions imposed on their use. The action in this direct final rule will add these halon substitutes to the appendices to subpart G.

EPA is publishing today's revisions to the SNAP lists without prior proposal because the Agency views them as non-controversial and anticipates no adverse comment. We are adding three new agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions. This action does not place any significant burden on the regulated community but lists as acceptable, subject to narrowed use limits or use conditions, new halon substitutes while continuing to protect human health and the environment.

In the ''Proposed Rules'' section of today's Federal Register publication, EPA is publishing a companion proposed rule that proposes the same actions as in this direct final rule. The direct final rule will be effective on March 28, 2003, without further notice unless we receive adverse comment (or a request for a public hearing) by February 26, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked ''Public'' to be filed in the Public Docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking:* Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes:* Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process:* Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification:* Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or

existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

• *Outreach:* Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse:* Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA issued a rule (69 FR 13044) which described the process for administering the SNAP program and published EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risk posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as ''acceptable subject to use conditions.'' Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for purposes of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP rule published in the **Federal Register** on March 18, 1994 (59 FR 13044), and see also the Code of Federal Regulations at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate **Federal Register** citations may be found at EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/chron.html.* For a complete listing of the Agency's decisions on acceptable and unacceptable substitutes, go to *http://www.epa.gov/ozone/snap/lists/index.html.*

II. Listing of Substitutes

In this final rule, EPA is issuing its decision on the acceptability, subject to narrowed use limits or use conditions, of the following substitutes in the fire suppression and explosion protection sector: *HFC227–BC, C6-perfluoroketone, and H Galden hydrofluoropolyethers (HFPEs).* As described in the March 8, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

The section below presents a detailed discussion of the fire suppression and explosion protection substitute listing determinations that are finalized in today's Final Rule. Tables summarizing these listing decisions are at the end of this document. The comments contained in the tables provide additional information on substitutes determined to be unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. The comments contained in the appendix are not a binding part of the regulatory decision and are, therefore, not mandatory for use of a substitute. Nor should such comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of substitutes to act consistent with all such comments in their use of these substitutes especially if any practices have not already been identified in existing industry standards such as fire and building codes, or occupational exposure guidelines.

A. Listing Decisions: Fire Suppression and Explosion Protection—Total Flooding Agents

1. Acceptable Subject to Use Conditions

a. HFC227–BC

HFC227–BC is acceptable, subject to use conditions, as a halon 1301

substitute for total flooding uses. HFC227–BC, which contains a combination of HFC–227ea and sodium bicarbonate, is designed for total flooding use in military combat vehicle crew and engine compartments and for industrial fire and explosion suppression systems in occupied and unoccupied areas. HFC–227ea, the main ingredient in HFC227–BC, is a halocarbon fire extinguishing agent that has previously been approved as a total flooding and streaming agent under EPA's SNAP program. It has no ozone-depletion potential and has a global warming potential (GWP) of 3800 compared to CO_2 on a 100-year time horizon. HFC–227ea is non-flammable. Its No Observed Adverse Effect Level (NOAEL) is 9.0% and the Lowest Observed Adverse Effect Level (LOAEL) is 10.5%. The calculated design concentration of HFC–227ea is 7.0% which provides a sufficient margin of safety for use in normally occupied areas in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2001 Standard for Clean Agent Fire Extinguishing Systems (*see* discussion below).

EPA is providing specific use conditions designed to protect military crew members and workplace personnel who may be present in areas where HFC227–BC is discharged. HFC227–BC is approved for use in military combat and vehicle crew and engine compartments and industrial fire or explosion suppression systems for occupied and unoccupied areas. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of HFC–227ea and sodium bicarbonate, as well as handling procedures to reduce risk resulting from these hazards. Sodium bicarbonate, while low in toxicity, also has the ability to affect blood pH level; therefore, its release in all settings should be targeted so that increased blood pH level would not adversely affect those exposed.

The addition of sodium bicarbonate in the mixture is to minimize the formation of toxic hydrofluoric acid (HF) formed by the decomposition of HFC–227ea during a fire. Sample calculations and assumptions for respirable and released sodium bicarbonate for varied enclosure sizes are included in the risk screen conducted for this substitute and available in public Docket A–2002–08 for this rule.

EPA is also providing additional comments regarding use of HFC227–BC. Use of HFC–227ea, the primary ingredient in HFC227–BC, should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. Use of HFC227–BC should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event personnel should reenter the area. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

On January 29, 2002, EPA published a Direct Final Rule (67 FR 4185) to replace the use conditions imposed under SNAP for halocarbon and inert gas agents used in the fire suppression and explosion protection industry with safety standards that have been established by the National Fire Protection Association (NFPA). NFPA is an independent, voluntary membership, non-profit international organization that is dedicated to reducing the burden of fire on the quality of life by advocating scientifically-based consensus codes and standards, research, and education for fire and related safety issues. NFPA codes and standards are used by the fire protection community throughout the United States and the world.

Based on the above rule, the revised SNAP listings for halocarbon alternatives, such as HFC–227ea, include the following comment, ''Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems.'' In the edition of NFPA 2001 that was published in March 2000, safety guidelines for halocarbon and inert gas agents are found in section 1.6, entitled ''Safety.''

EPA's precautionary requirements are consistent with worker safety conditions required by OSHA and the NFPA 2001 Standard, as mentioned above. Individuals must adhere to OSHA regulations in all commercial applications. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard. As stated in the preamble to the original SNAP rule at 59 FR 13099, ''EPA has no intention to assume responsibility for regulating workplace safety especially with respect to fire protection, nor does the Agency intend SNAP regulations to bar OSHA from regulating under its Pub. L. 91–596 authority.''

HFC227–BC reduces risk to the public compared to the ODS it replaces because it has no ODP. HFC227–BC also has a lower global warming impact and produces less toxic, caustic HF than HFC–227ea alone, because less of the halocarbon agent is needed when sodium bicarbonate is also being used. Other substitutes already listed as acceptable for total flooding have a higher global warming impact and comparable toxicity. Thus, we find that HFC227–BC is acceptable, subject to use conditions, because it reduces overall risk to public health and the environment in the end use listed.

B. Listing Decisions: Fire Suppression and Explosion Protection—Streaming Agents

1. Acceptable Subject to Narrowed Use Limits

a. C6-perfluoroketone

C6-perfluoroketone is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that C6-perfluoroketone be used only in nonresidential applications. C6-perfluoroketone is comprised of a perfluoroalkyl ketone (1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-3-pentanone). C6-perfluoroketone has no ozone-depletion potential, a global warming potential of 6–100 compared to CO_2 on a 100-year time horizon, and an atmospheric lifetime of less than one year. It is marketed under the trade name Novec-1230. The NFPA 2001 standard refers to C6-perfluoroketone as FK–5–1–12myy2. In studies on C6-perfluoroketone, the NOAEL is 10% and the LOAEL is >10%.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that, by comparison to halon 1211, C6-perfluoroketone significantly reduces overall risk to the environment. With no ozone-depletion potential, a global warming potential value of less than 1, and an atmospheric lifetime of less than three days, C6-perfluoroketone provides an improvement over use of hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in fire protection. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking.

EPA is providing additional comments regarding use of C6-perfluoroketone for streaming agent uses. Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product. The acceptable exposure limit (AEL) is set at a level believed to protect workers who are regularly exposed, such as in the manufacturing or filling processes, from chronic adverse effects; the estimated AEL for C6-perfluoroketone is 100 ppm as an 8-hour time-weighted average. EPA recommends the following for establishments filling canisters to be used in streaming applications: adequate ventilation should be in place; all spills should be cleaned up immediately in accordance with good industrial hygiene practices; and training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. We find that C6-perfluoroketone is acceptable subject to narrowed use limits (for use only in non-residential areas) because it reduces overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

b. H Galden Hydrofluoropolyethers

H Galden Hydrofluoropolyethers (HFPEs) is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that HFPEs be used only in nonresidential applications. This substance is a mixture of fractions of hydrofluoropolyethers of similar composition. H Galden HFPEs have an ozone depletion potential of zero. They have an atmospheric lifetime from 12 to 25 years. H Galden HFPEs have a global warming potential (GWP) that varies for the particular fraction, ranging from 2790 to 6230 for the fractions having the highest GWP. Despite the relatively high GWP values, use of H Galden HFPEs are anticipated to have a smaller impact on global warming than the use of HFCs. H Galden HFPEs are non-flammable. In studies on H Galden HFPEs, the NOAEL was 3.5% and a LOAEL was not identified. H Galden HFPEs are expected to be blended with other compounds (*e.g.,* HFC–227ea, HFC–125) that have previously been approved under SNAP.

EPA is providing additional comments regarding use of H Galden HFPEs in streaming agent applications. The estimated AEL for H-Galden HFPEs 1163 ppm for workplace exposure, typically during the manufacturing and filling processes. Because the AEL is above 1000 ppm, a level that can be achieved using generally employed good housekeeping and industrial practices, EPA recommends that exposure levels be kept below 1000 ppm on an 8-hour TWA basis. Further, EPA recommends that H Galden HFPEs should not exceed its ceiling concentration of 6000 ppm at any time. EPA recommends the following procedures should be followed to ensure that this level is not exceeded:

—Adequate ventilation should be in place;
—All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of H Galden HFPEs or extinguishing units filled with the material.

H-Galden HFPEs have no ODP, relatively low atmospheric lifetimes of from 13–25 years, and comparable impact on global warming with the SNAP-approved HFC. H Galden HFPEs reduce risk overall compared to halon 1211, the ODS they replace. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking. Thus, we find that H-Galden HFPEs are acceptable subject to narrowed use limits (for use only in non-residential applications) because they reduce overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on October 3, 2002, that it considers this a ''non-significant regulatory action'' within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* that are not already approved by the OMB. OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20004, by E-mail at *farmer.sandy@epa.gov,* or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA 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 statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) A small business that produces or uses fire suppressants as total flooding and/or streaming agents with 500 or fewer employees or total annual receipts of $5 million or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

Use of halon 1211 as a streaming agent in portable extinguishers has historically been in industrial and commercial applications with limited residential uses. Residential users typically use lower cost alternatives such as dry chemical and carbon dioxide hand-held extinguishers. In industrial and commercial applications, the newer chemical agents compete for specialized segments of the halon 1211 market where lower cost alternatives such as dry powder and carbon dioxide extinguishers may not be an appropriate option and where factors such as cleanliness and efficacy of the agent are important. With respect to EPA's decision on H Galden HFPEs, EPA is finding it acceptable for all uses requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galden HFPEs, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. Thus, EPA is providing additional options for any entity, including small entities, to replace halon 1211 in streaming applications.

Use of halon 1301 total flooding systems have historically been in the protection of essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. The primary party intending to use HF227–BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army has not yet used this fire suppressant, so the regulatory restrictions imposed in today's rule will not affect current use. Thus, EPA is providing more options to any entity, including small entities, to use these substitutes.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA 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.'' ''Policies that have federalism implications'' is defined in the Executive Order 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.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this final rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, which provides for exposure and safe use of halocarbon and inert gas agents used to extinguish fires. Copies of this standard may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555 and requesting order number S3–2003–00. The NFPA 2001 standard meets the objectives of the rule by setting scientifically-based guidelines for exposure to halocarbon and inert gas agents used to extinguish fires. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in the judicial proceedings brought to enforce those requirements.

K. Submittal to Congress and General Accounting Office

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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. 804(2). This rule will be effective on March 28, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671—7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G of part 82 is amended by adding Appendix L to read as follows:

Appendix L to Subpart G of Part 82—Substitutes Listed in the January 27, 2003, Final Rule, Effective March 28, 2003.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Conditions	Comments
Total flooding	HFC227–BC	Acceptable subject to use conditions.	Sodium bicarbonate release in all settings should be targeted so that increased pH level would not adversely affect exposed individuals. Users should provide special training to individuals required to be in environments protected by HFC227–BC extinguishing systems. Each HFC227–BC extinguisher should be clearly labelled with the potential hazards from use and safe handling procedures.	Use of the agent, HFC–227ea, should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. *See* additional comments 1, 2, 3, 4, 5.

Additional comments″

1—Should conform with relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162.

2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Comments
Streaming	C6-perfluoroketone (FK-5-1-12MYY2).	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventilation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. *See* additional comments 1, 2, 3, 4.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End-use	Substitute	Decision	Conditions	Comments
Streaming	H Galden HFPEs	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventialtion should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. *See* additional comments 1, 2, 3, 4.

Additional comments.

1—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

2—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

3—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

4—As with other streaming agents, EPA recommends that potential risks of combustion by-products be labelled on the extinguisher (*see* UL 2129)

[FR Doc. 03–1623 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7443–5]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to list three substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject either to narrowed use limits or use conditions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment.

Elsewhere in today's **Federal Register**, EPA is taking this action as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. A rationale for this action is set forth in the preamble to the direct final rule.

If we receive no adverse comments and no requests for public hearings in response to this action, we will take no further activity in relation to this rule. If EPA receives adverse comments or a request for public hearing, we will withdraw the direct final rule and review any comments in accordance with this proposal. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. Any parties interested in commenting on this action should do so at that this time.

DATES: Comments must be received in writing by February 26, 2003.

ADDRESSES: Public comments and data specific to this action should be sent to Docket A–2002–08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20460. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 566–1742; fax (202) 566–1741. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT.** Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Bella Maranion at (202) 564–9749 or fax (202) 565–2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., 4th floor, Washington, DC 20001. Also contact the Stratospheric Protection Hotline at (800) 296–1996 and EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/index.html.*

SUPPLEMENTARY INFORMATION: See additional information, pertaining to this action, provided in the Direct Final action of the same title located in today's **Federal Register**.

I. EPA Proposal

EPA would add three fire suppression agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions, for halons which are ozone-depleting substances widely used in the fire protection sector. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that are unacceptable or that have restrictions imposed on their use. Today's action would modify the appendices to subpart G to include these new substitutes.

The direct final rule will be effective on March 28, 2003, without further notice unless we receive adverse comment (or a request for a public hearing) by February 26, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked ''Public'' to be filed in the public docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only.

II. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on October 3, 2002, that it considers this a ''non-significant regulatory action'' within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test

marketing activity, recordkeeping for substitutes acceptable subject to narrowed use limits, and recordkeeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

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EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) a small business that produces or uses fire suppressants as total flooding agents with 500 or fewer employees or total annual receipts of $5 million or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Use of halon 1211 as a streaming agent in portable extinguishers has historically been in industrial and commercial applications with limited residential uses. Residential users typically use lower cost alternatives such as dry chemical and carbon dioxide hand-held extinguishers. The newer chemical agents compete for specialized segments of this market where lower cost alternatives such as dry chemical and carbon dioxide extinguishers may not be an appropriate option. With respect to EPA's decision on H Galen HOPES, EPA is finding it acceptable as a streaming agent in nonresidential areas as requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galen HOPES, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant streaming agent, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. EPA is providing additional options for any entity, including small entities, to replace halon 1211 in streaming applications.

Use of halon 1301 total flooding systems have historically been in the protection of essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the US. Owners of new facilities make up the market for the new alternative agent systems that are available and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. The primary party intending to use HFC227–BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army is currently testing this fire suppressant in its new armored vehicles, so the regulatory restrictions imposed in today's rule will not affect current use. Thus, EPA is providing more options to any entity, including small entities, to use this substitute as a replacement for halon 1301 in total flooding applications.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

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Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA 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.'' ''Policies that have federalism implications'' is defined in the Executive Order 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.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will provide addition options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This proposed rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this proposed rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA references the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, which provides for exposure and safe use of halocarbon and inert gas

agents used to extinguish fires. Copies of this standard may be obtained by calling the NFPA's order telephone number at 1–800–344–3555 and requesting order number S3–2003–00. In addition, EPA has worked extensively in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–1624 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
January 27, 2003

Part V

Department of Housing and Urban Development

Department of Health and Human Services

Department of Veterans Affairs

Notice of Funding Availability (NOFA) for the Collaborative Initiative To Help End Chronic Homelessness; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. FR–4805–N–01]

Notice of Funding Availability (NOFA) for the Collaborative Initiative To Help End Chronic Homelessness

AGENCIES: Office of Community Planning and Development, HUD; Substance Abuse and Mental Health Services Administration, and Health Resources and Services Administration, HHS; Substance Abuse, Mental Health and Provider Care Services, VA.

ACTION: Notice of funding availability.

SUMMARY: This notice announces a $35 million initiative to help end chronic homelessness. The initiative, coordinated by the U.S. Interagency Council on the Homeless (ICH), involves the participation of three Council members: The Department of Housing and Urban Development, the Department of Health and Human Services, and the Department of Veterans Affairs. The initiative supports the Administration's goal to end chronic homelessness by seeking to create a collaborative and comprehensive approach to addressing homelessness.

SUPPLEMENTARY INFORMATION:

1. Title of Initiative

Collaborative Initiative to Help End Chronic Homelessness: Notice of Funding Availability

2. Departments

Department of Housing and Urban Development
Department of Health and Human Services
Department of Veterans Affairs

3. Date of Issuance

January 27, 2003.

4. Deadline for Receipt of Applications

April 14, 2003.

5. Authority

Housing and Urban Development, 42 U.S.C. 11303
Veterans Affairs, 38 U.S.C. 1710, 1712 and 1722
Health and Human Services/Substance Abuse and Mental Health Services Administration, Section 509 and 520 of the Public Health Service Act
Health and Human Services/Health Resources and Services Administration, Section 330, 42 U.S.C. 254b

6. Introduction

The U.S. Interagency Council on the Homeless (ICH) is coordinating a $35 million joint initiative with the Departments of Housing and Urban Development (HUD), Health and Human Services (HHS), and Veterans Affairs (VA) to support the Administration's initiative to end chronic homelessness. This initiative seeks to create a collaborative and comprehensive approach to addressing the problems of homelessness of our most vulnerable citizens. This collaboration among the departments offers housing and service funding through a consolidated application. Applicants must show how the funds they are requesting will be part of a comprehensive and integrated community strategy to use funding sources, including mainstream services resources, to assist persons who are chronically homeless and homeless families with a disabled adult member (as defined in this NOFA) to move from the streets and emergency shelters into stable housing and receive the range of services and other support needed to promote and maintain greater self-sufficiency.

Funds will be awarded by HUD, two agencies within HHS, and VA based on one consolidated application. This application requests a description of the comprehensive approach (Section 1) being taken by each applicant, and includes four Agency-Specific application sections (Sections 2–5) tied to the four federal funding streams. Applications must address both the overall approach and specific technical requirements established by the participating agencies. Funding provided by HUD must be used to provide permanent housing; HHS/SAMHSA (Substance Abuse and Mental Heath Services Administration) funds will be directed toward substance abuse treatment, mental health and related supportive services; and HHS/HRSA (Health Resources and Services Administration) funds will be used for primary health care services. Applicants will be able to obtain additional resources from local VA facilities by addressing the specific needs of chronically homeless veterans in their application.

7. Background and Purpose

Research indicates that as many as 150,000 people experience chronic homelessness in this country each year. People experiencing chronic homelessness often have an addiction or suffer from a disabling physical or mental condition and are homeless for extended periods of time or experience multiple episodes of homelessness. For the most part, they get help for a short time but soon fall back to the streets and shelters. Because the needs of these persons are not comprehensively addressed, they cycle through the homeless system and consume a significant portion of available resources. In fact, research indicates that these individuals consume more than half of all homeless services. As such, there are significantly fewer resources available for 90 percent of the homeless—including families—who, with a little assistance, could often exit homelessness relatively quickly. By addressing the housing and service needs of persons who are chronically homeless, we will have more resources available to meet the needs of other homeless people. When persons who are chronically homeless have access to basic assistance like housing and treatment, they have fewer problems and are less likely to need expensive emergency interventions. The research makes it clear that one of our best hopes for ending homelessness of every sort depends on addressing chronic homelessness. We are setting policy and taking action based on that research.

Goals: The purpose of this initiative is to assist states and communities in ending or substantially reducing chronic homelessness. The goals are as follows:

1. Increase the effectiveness of integrated systems of care for persons experiencing chronic homelessness and homeless families with a disabled adult member by providing comprehensive services and treatment and linking them to housing.

2. Create additional permanent housing for persons experiencing chronic homelessness and homeless families with a disabled adult member. A critical element in ending chronic homelessness is the provision of adequate housing resources. As such, HUD's funds may be used only for permanent housing activities. For the purpose of this NOFA, permanent housing is defined as housing that has no limit imposed on the length of a resident's stay in the project and includes the Safe Havens program in addition to other programs described in HUD's Agency-Specific Section (Section 2).

3. Increase the use of mainstream resources (*e.g.* Medicaid, Temporary Assistance for Needy Families, Food Stamps, Substance Abuse Prevention and Treatment Block Grants, Mental Health Block Grants, Social Services Block Grants, State Children's Health Insurance Program, *etc.*) that pay for

services and treatment for this population. Existing mainstream resources are available, but underused in serving chronically homeless persons and homeless families with a disabled adult member.

4. Replicate service, treatment, and housing models that have proven to be effective based on sound evidence.

5. Support the development of infrastructures that sustain the housing, services, treatments, and inter-organizational partnerships beyond this federal initiative.

8. Target Population

This initiative targets persons experiencing chronic homelessness, including veterans. A chronically homeless person is defined as ''an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more OR has had at least four (4) episodes of homelessness in the past three (3) years.''

Not more than 10 percent of the funds awarded will be targeted to projects that will serve homeless families with a disabled adult member. For the purpose of this NOFA, a family is defined as two or more adults, one of whom has a disabling condition as defined below.

Two key terms in the above description of the population to be served that need to be defined are ''homeless'' and ''disabling condition.'' For the purpose of this NOFA, the term ''homeless'' means ''a person sleeping in a place not meant for human habitation (*e.g.*, living on the streets) or in an emergency homeless shelter.'' For the purpose of this NOFA, disabling condition is defined as ''a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living.''

One applicant may serve both chronically homeless individuals and homeless families with a disabled adult member, but must complete separate applications for each population. No one project and no one application may serve both populations.

9. Funding

This notice is intended to simplify the application process, bring consistency and uniformity to the application and selection process, and facilitate funding opportunities available from these three departments by awarding grants in a coordinated fashion. By announcing this notice as a joint effort, the participating federal agencies believe applicants will be better able to coordinate and integrate services within communities to avoid duplication, close gaps, and comprehensively serve those persons most in need of housing and services.

Although funds will come from separate federal agencies for specific components of the housing and service plans, awards will be made on the basis of a comprehensive review by all involved agencies. This is to ensure that applicants have addressed and can provide for each of the four core elements—(1) housing, (2) mental health and substance abuse treatment, (3) primary care, and (4) veteran's services. In order to be eligible for funds from any of the participating agencies, applicants must address each of these elements, even if they are not requesting funding for a particular element. Applicants will address these elements in the Agency-Specific sections of the application. Even if not requesting funding from each of the four agencies, the applicant must still complete the appropriate section of each agency's portion of the application form. For example, provision of primary care services is a required core element, but applicants may use other resources instead of applying for HHS/HRSA funds to provide these services. The Agency-Specific sections will specify which questions pertain to applicants not seeking funding from each of the partnering federal agencies.

The term of the grant award will vary depending on the funding sources being used. The overall intent is to make the program available for three to five years, based on availability of appropriations. The entirety of the HUD and VA funds will be awarded at the beginning of the grant term, in FY 2003, for the life of the project. HHS funds will be awarded on an annual basis, subject to the availability of appropriations.

- Approximately $20 million is expected to be awarded by HUD for terms of three to five years to fund permanent housing activities. HUD's funds may be used under specified components of the Supportive Housing Program, which funds acquisition, minor rehabilitation, leasing, and operating costs for permanent housing for up to three (3) years, or specified components of the Shelter Plus Care Program, which provides rental assistance to tenants for five (5) years.
- Approximately $7 million is expected to be available from HHS/SAMHSA in FY 2003 to fund mental health and substance abuse services. Awarding of FY 2003 funds is contingent on passage of a permanent HHS appropriation for FY 2003. Awards in FY 2004 and 2005 will be subject to the availability of appropriations and will be reduced in size in order to increase grantees' reliance on mainstream resources and alternate sources of funding.
- Approximately $3 million is expected to be available from HHS/HRSA in FY 2003 to fund primary health care services. These funds will be awarded as supplemental awards to existing Section 330 Health Centers. The awarding of FY 2003 HHS/HRSA funds is contingent on passage of a permanent HHS appropriation for FY 2003. Subject to availability of appropriations, funds may be available for FY 2004 and FY 2005.
- Subject to availability of appropriations, approximately $5 million of in-kind support is expected to be available from VA to fund services for chronically homeless veterans for grant terms of three years.

Of the $35 million available, no grant award for an individual project will exceed $3.5 million in total grant funds from all federal partners in this initiative. In addition, HUD will not award more than $2 million to any one project or applicant for housing activities. HHS/SAMHSA will not award more than $700,000 to any one project or applicant for mental health and substance abuse services for the first year of funding. Also, HHS/HRSA will not award more than $300,000 per project per year. The awarding of HHS funds in FY 2004 and FY 2005 will be subject to continued availability of funds and progress achieved by the grantee.

In making the funding decisions, if funds from one source are exhausted, but funds from other sources remain available, applicants may still receive available funds if they can demonstrate an ability to provide the services or housing with alternate sources of support. This situation will be handled in the form of a conditional award or deferred decision.

10. Application Submission

The HUD Headquarters building, in which the U.S. Interagency Council on the Homeless is currently located, has implemented security procedures that apply to application submission. Please read the following instructions carefully and completely.

- No hand deliveries will be accepted.
- Applications may only be shipped using DHL, Falcon Carrier, Federal Express (FedEx), United Parcel Service (UPS), or the United States Postal Service (USPS).

• All mailed applications must be postmarked on or before midnight of the due date established by this Notice of Funding Availability (NOFA) and must be received within 30 calendar days of the due date.

• All applicants who mail applications must have a Certificate of Mailing (USPS Form 3817) as their documentary evidence that the application was filed on time.

Addresses: Since four federal partners will be involved in reviewing applications, provide one original and four copies of your application to the U.S. Interagency Council on the Homeless, Room 2204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The application deadline submission date is April 14, 2003.

Applications Sent by Overnight/Express Mail Delivery: If your application is sent by overnight delivery or express mail, your application will be considered timely if it is placed with the delivery service by the application deadline. You may be required to submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service no later than the application due date. Delivery must be made between 8:30 a.m. and 5:30 p.m. Eastern time, Monday through Friday.

11. General Guidance on Application Development

This NOFA provides the application procedures and requirements for funding under this initiative, and is divided into separate sections. Section 1, the Comprehensive Approach, explains the requirements and rating factors applicable to the Comprehensive Approach section of the application. Sections 2–5, the Agency-Specific sections of this NOFA, provide descriptions of the specific programs for which funding is made available and describes any additional procedures and requirements that are applicable to a specific component of the comprehensive program. Please be sure you read both the Comprehensive Approach and the Agency-Specific sections of this NOFA to ensure that you respond to all the requirements for funding.

Applicant Eligibility: One organization is expected is take the lead in submitting the consolidated application. This lead organization is expected to submit the consolidated application, which identifies the consortium arrangements, and is responsible for coordinating this consortium over the term of the grant. The lead organization must be a non-profit or public entity. The entities that partner with the lead organization must meet one or more of the agency-specific eligibility criteria. See the Agency-Specific sections of the NOFA to determine your eligibility to apply for specific funds. Participation by eligible non-profit organizations, including faith-based and other community-based organizations, is encouraged.

Additionally, applicants must commit that any proposed project will exclusively serve those individuals who are chronically homeless or homeless families with a disabled adult member as defined in this notice.

Technical Assistance: Before the application due date, agency staff will be available to provide you with general guidance and technical assistance about this NOFA. However, staff are not permitted to assist in preparing your application. For technical questions on program issues, contact the U.S. Interagency Council on the Homeless at 1–866–450–2273 (this number may also be dialed as 1–866–450-CARE) (these are toll-free telephone numbers). Persons with hearing and/or speech challenges may access the above telephone number by TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). The Council will be able to put applicants in contact with the federal agency best able to answer technical questions.

Satellite Broadcast: HUD, HHS, and VA are planning to hold an information broadcast via satellite for potential applicants to learn more about this initiative and preparation of the applications. For more information about the date and time of the broadcast, consult the web pages listed below.

Application Submission: To apply for funding under this NOFA, the lead applicant must submit a cover letter, as described in the Application Kit, and a signed Memorandum of Agreement between all participating entities. The Agency-Specific sections of the application require an agency-specific SF–424 and set of assurances and certifications, plus additional forms, certifications, and other information required for their specific programs. All of the required forms for each agency can be found in the application kit.

12. Application Kits

You can download the application kit and required forms from the following federal Web sites:

www.ich.gov
http://www.hud.gov/offices/cpd/homeless/apply/index.cfm
http://www.hrsa.gov/grants/homeless.htm
http://www.samhsa.gov
http://www.va.gov/homeless/page.cfm?pg=20

13. Review Process

Applications submitted in response to this NOFA will be reviewed for threshold criteria and technical merit. Threshold criteria are described below, and additional threshold criteria are included in the Agency-Specific sections.

Overall threshold requirements are that:

• All applicants and all participating partners must be non-profit or public entities;

• Each application must address all aspects of housing and service provision, even if the applicant is not requesting funds for one or more of these elements;

• The application is received by the specified receipt date;

• The application is complete; and

• The application conforms to the instructions for format, including page limitations, as described in the Application Kit.

Technical merit has two components—the merit of the Comprehensive Approach and the merit of activities proposed under each Agency-Specific section. An application must pass both reviews in order to receive funding. The maximum total score for any applicant under this NOFA is 200 points. These points are divided between the Agency-Specific sections and the Comprehensive Approach section. The Agency-Specific sections are worth a total of 100 points. Within these 100 points, HUD's portion is worth 30 points, the HHS/SAMHSA section is worth 25 points, the HHS/HRSA portion is worth 25 points, and the VA section is worth 20 points. If an application is deficient in one Agency-Specific section, the entire application will be disqualified. Deficiency is defined as scoring below 40 percent of the allotted points for any agency's section.

The U.S. Interagency Council on the Homeless (ICH) will serve as the central point for the receipt of applications. Upon receipt at ICH, applications will be sent to HUD, HHS, and VA where each agency will review its Agency-Specific section first for threshold criteria and then, for those applications passing the threshold, for technical merit. (See the Agency-Specific sections for each agency's criteria.)

Applications that pass all four agency's reviews will move to the next stage of review. In this stage, an interdisciplinary, interdepartmental team will review and score each

application's Comprehensive Approach using the six rating criteria described in Section 1—Comprehensive Approach. The Comprehensive Approach is scored up to an additional 100 points, broken down among these six rating criteria. Only those applications with a Comprehensive Approach that is acceptable to all federal partners involved will be funded.

Ranking: The score for all ranking factors will be summed to obtain a total score for each project submitted under the collaborative NOFA. The projects will then be ranked from highest to lowest nationally according to the total combined score.

Selection and Adjustments to Funding: (a) *Selection*—Projects will be awarded based on national ranking as described above and according to the provisions for geographical diversity described below. The awarding of funds may be conditional upon receipt of further information, as requested by the federal agencies involved.

When insufficient funds remain to fund all projects requesting funding that receive the same total score, ties will be broken among such projects by comparing scores received by the projects for each of the following scoring factors, in the order shown: Soundness of Approach, Capacity, and Coordination.

(b) *Adjustments to Funding*—In order to ensure maximum geographic diversity in the awards, no individual project applicant and no one unit of general local government will be awarded more than 10 percent of the total amount of available resources under this collaborative NOFA. The federal departments reserve the right to make selections out of rank order to provide for geographic distribution of funds.

Additional selection considerations: In order to be eligible for funding under this notice, applicants must commit that funds will be used exclusively to serve those individuals who are chronically homeless as that term is defined in this notice except that no more than 10 percent of these funds will be awarded to projects committed to serving disabled homeless families as that term is defined in the notice.

14. General Reporting/Evaluation Requirements

Grantees must submit annual progress reports and a final report to the ICH and to the grant-administering agencies. ICH and the federal partners will use this information to determine progress of the grantees toward meeting their goals. Consistent with the main objective of this initiative, grantee performance will be measured by the number of persons experiencing chronic homelessness and homeless families with a disabled adult member moved off the streets and out of shelters and placed into permanent housing. It is expected that local evaluations will include measuring progress toward accomplishing the tasks described in the grant application and providing for collection of quantitative and qualitative data that permits measurement of progress toward achieving the outputs and outcomes envisioned by the goals and objectives contained in the application. Grantees must collect outcome information on clients served to be compared against benchmarks throughout the term of the grant.

The annual progress and final reports shall include, but are not limited to, narrative and empirical information on the following: (1) Type and number of housing units provided; (2) characteristics of the clients and residents served; (3) a description of the services and treatments provided, including funding sources other than from this grant; (4) description of the collaborations and partnerships established over the course of the grant; (5) the extent to which services are financed by mainstream programs and how financing patterns change during the duration of the grant program; (6) any revisions or refinements to the benchmark estimate of persons experiencing chronic homelessness in the target community; and (7) other such information as prescribed by the federal partners.

As a condition of award, grantees funded under this initiative agree to fully cooperate with any organization funded by one or more of the sponsoring federal agencies to conduct an independent evaluation of the full initiative.

15. Post-Award Requirements

The federal partners will each provide post-award support, as appropriate, to grantees through technical assistance on clinical, programmatic, and evaluation issues. The Agency-Specific portions of this NOFA may specify further post-award requirements. Please refer to these sections for this information.

16. General Outline of Application

While the funding for this initiative will come from HUD, HHS, and VA, one overall application will be required, including Agency-Specific sections, each of which may specify program-specific SF–424s, sets of assurances and certifications, and additional forms. A cover letter and memorandum of agreement between all participating entities are required, as described in the application kit. The overview of each Section is as follows:

1. *Comprehensive Approach:* The applicant will be required to submit a description of its approach that is comprehensive in nature and includes: (1) A description of the problem; (2) the target population; (3) a description of the method by which potential clients will be identified and referred to the program; (4) the gaps in housing and supportive services; (5) provision for client-level comprehensive service planning; (6) the coordination of the housing with needed supportive services to assure access to these resources by the target population; (7) a planning process that addresses leveraging of resources and sustainability of services and treatment beyond the availability of these federal funds; (8) capacity of the providers to deliver housing, treatment, and services; (9) an implementation plan with a firm schedule of major action steps; (10) the budget and fiscal controls; and (11) how progress toward reducing chronic homelessness will be monitored and measured.

2. HUD Section-Permanent Housing: The applicant will be required to submit a description of how HUD funds will be used to develop permanent housing, a budget, and a budget narrative. A description of housing activities for which funds are requested from HUD should also be included in this section. Additionally, the applicant must complete several mandatory applicant certifications, which are provided. If not requesting HUD funding, the applicant is required to explain how the permanent housing units needed to house individuals served by the proposed project will be provided.

3. HHS/SAMHSA Section-Substance Abuse Treatment, Mental Health, and Related Supportive Services: The applicant will be required to submit an application (Public Health Service Application Form 5161–1) that describes how HHS/SAMHSA funds will be used to provide substance abuse treatment, mental health services and related supportive services, a budget, and a budget narrative for these components of the comprehensive approach. If not requesting SAMHSA funding, the applicant is required to explain how the substance abuse and mental health services will be provided.

4. HHS/HRSA Section-Primary Health Care Services: The applicant will be required to submit an application (Public Health Service Application Form 5161–1) that describes how HHS/HRSA funds will be used to provide primary health care services and

coordination of care with other providers involved in the collaboration. Applicants are limited to existing Health Center grantees (including Health Care for the Homeless grantees) currently funded under Section 330 of the Public Health Service PHS Act (PHS Act). Applicants are limited to existing Health Centers, since funding for this initiative is coming from the Health Center funding line and consequently the requirements of Section 330 of the PHS Act apply to the recipients of those funds. In addition, existing Health Center grantees receive certain privileges, including coverage under the Federal Tort Claims Act, ability to receive higher Medicare and Medicaid reimbursement rates, and reduced price pharmaceuticals. It would be inappropriate to provide these privileges to a new group of grantees who had not been approved through the extensive, comprehensive application process to achieve Section 330 Health Center status.

Applications should be submitted as a proposed supplemental grant and will be funded as such. Further instructions appear in this section. If not requesting HRSA funding, the applicant is required to explain how the primary health care services will be provided.

5. *VA Section—Substance Abuse, Mental Health and Primary Care Services Targeted to Veterans:* The applicant is required to submit a detailed description of how a collaborative relationship with VA will be created and sustained in an effort to provide services to chronically homeless veterans. The chronically homeless veterans to be served will be those veterans housed in or being provided services through this joint initiative and who meet the definition of homeless as put forth in this NOFA. Although funding will not be awarded directly to the recipient of the grant, funding is available for the VA facility that partners with the applicant. VA facilities can include medical centers or programs under the direction of medical centers including VA outpatient clinics. If not requesting VA services, the applicant is required to explain how the needs of chronically homeless veterans will be addressed.

Statement of Support: The Council and the three agency Council members (HUD, HHS and VA) participating in this initiative look forward to receiving applications that set out a comprehensive and integrated community strategy to use funding sources to assist persons who are experiencing chronic homelessness and homeless families with a disabled adult member.

Dated: December 20, 2002.

Mel Martinez,

Secretary, Department of Housing and Urban Development.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

BILLING CODE 4210–29–P

SECTION 1

COMPREHENSIVE APPROACH

Billing Code 4210-29P

Section 1: Comprehensive Approach—100 Points

I. Overview

The purpose of the Comprehensive Approach is to demonstrate that the applicant and the providers of all four core elements—(1) permanent housing, (2) mental health and substance abuse treatment and related supportive services, (3) primary care, and (4) veteran's services—are working in collaboration to integrate housing and services for persons experiencing chronic homelessness and disabled homeless families. This comprehensive strategy will use funding sources, including mainstream services resources, to provide a holistic approach to ending chronic homelessness.

Eligible Applicants

Although the lead applicant must submit the comprehensive approach as a part of the consolidated application, it is expected that the lead applicant and the relevant partner agencies will have collaborated in developing the comprehensive approach. It is up to the partner entities to provide sufficient and appropriate resources to plan and coordinate this collaborative effort throughout the grant period.

Funding Criteria

- Threshold Requirements.
- Technical Merit.
- Availability of Funds.

II. Rating Criteria for the Comprehensive Approach

The Comprehensive Approach will not receive technical review if any one of the Agency-Specific sections score below 40 percent of the allotted points as the result of technical review of each agency's section.

The Comprehensive Approach will be reviewed using the following six criteria:

1. Documentation of Need and Extent of the Problem

This will include the extent to which the applicant demonstrates understanding of the unique characteristics of the target population, in terms of the overall number of homeless persons, disabled homeless families, and chronically homeless persons and their characteristics. The applicant must include a preliminary estimate of the number of persons experiencing chronic homelessness in the target community to establish a benchmark of need, and the method by which this estimate was derived. The narrative will also include a detailed assessment of the community resources currently available to meet the permanent housing and supportive services needs of the target population and the extent to which gaps in available services are identified and documented. *Points:* 10.

2. Soundness of Approach and Adequacy/Appropriateness of Delivery System

The Federal partners will consider the adequacy of the comprehensive approach, including the method by which potential clients will be identified and referred to the program, and the method by which the needs of the target population will be addressed. This includes: The extent to which a comprehensive range of services and treatment is available; the availability of permanent housing units that meet housing quality standards; and, the adequacy of the proposed service delivery model that coordinates treatment, services and supports with housing. The quality of the comprehensive approach will also be judged on the comprehensiveness of the content, feasibility of approach, and provision for linkages and coordination of services. In particular, the comprehensive approach needs to be the foundation for establishing sustainable service programming beyond the life of the Federal grant. Issues such as resource leveraging, establishing entitlements, and enrollment in mainstream service delivery are critical components of a sound comprehensive approach. *Points:* 25.

3. Capacity of the Applicant and Relevant Partner Agencies and Staff

This will include the demonstrated capacity of the lead applicant and other organizations that will be involved in the proposed project to provide appropriate permanent housing, primary care, mental health and substance abuse treatment, and supportive services. It will also include the appropriateness of the management and organizational capability of all organizations involved in this initiative. The Federal partners will take into account: The applicants' past performance in managing funds; the timely use of funds received from Federal, state or local programs; past success in meeting performance targets for completion of activities; and, the number of persons to be served or targeted for assistance. For those persons with service needs not eligible under this NOFA, capacity also includes the ability of the partnering entities to obtain necessary services for these persons. For example, a person with a developmental disability or persons living with AIDS and requiring home health care may have service needs beyond the scope of this NOFA. Partnering entities must explain how these needs will be met. *Points:* 20.

4. Appropriateness of Budget and Fiscal Controls

This will include a review of the following: How the proposed program is a cost-effective approach to meeting the needs of the target population; the resources required to achieve the goals and objectives; the expectations regarding Federal grant support and maximization of non-grant revenue relative to the proposed plan, including a description of leveraging resources; and the total grant dollars per client/unit and total cost per client/unit. *Points:* 15.

5. Collaboration

This will include the extent to which the lead applicant can coordinate the participation of all partner agencies/organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project. Memoranda of agreement from the major providers of housing and services will be required to prove the collaboration efforts of the partners. In addition, specific plans on how the project will systematically assist clients in accessing major Federal, State and local programs, such as Medicaid, TANF, SSI, SSDI, and VA Health Care, must be described. *Points:* 20.

6. Adequacy/Appropriateness of Evaluation Plan

The Federal partners will consider the appropriateness and adequacy of the overall plan for evaluating and monitoring the process and outcomes of the project, both for the lead organization and for all the partners, to ensure that the goals of the initiative are being met. This will include plans to comply with all requirements for each agency (*i.e.* Government Performance Results Act, Annual Performance Report) and the proposed approaches for gathering quantitative and qualitative data on the target population. Applicants must demonstrate the existence of a data collection system to track the goals/objectives of the project. *Points:* 10.

III. Reporting and Evaluation Requirements

The lead applicant must submit annual progress reports and a final report to the ICH and to the four Federal agencies. The annual progress and final

reports shall include, but are not limited to, narrative and empirical information on the following: description of the collaborations and partnerships established over the course of the grant; description of a strategic planning process; the extent to which services are financed by mainstream programs and how financing patterns change during the duration of the program; the extent to which barriers in accessing housing and services are reduced; numbers of clients served and permanent housing provided, any revisions or refinements to the benchmark estimate of persons experiencing chronic homelessness in the target community, and other such information as prescribed by the Federal partners.

BILLING CODE 4210–29–P

SECTION 2

HUD SECTION

Billing Code 4210-29P

Section 2: HUD Section—30 Points

I. Purpose

The purpose of the housing component of this collaborative NOFA is to provide permanent housing for chronically homeless persons and disabled homeless families when proposed as part of homeless assistance projects in which housing is directly linked to needed supportive services funded through other components of this NOFA or through other sources.

Eligible Applicants

The chart in Appendix 1—HUD of this announcement identifies the eligible applicants for the McKinney-Vento Act programs through which housing funds are available.

II. Amount Allocated

Approximately $20 million in funding is available under the housing component of this collaborative NOFA. Funds for housing will be awarded for new projects under only one of the following two McKinney-Vento Act programs:

A. Supportive Housing Program (Permanent Housing or Safe Havens Components only); or,

B. Shelter Plus Care (Tenant-Based, Sponsor-Based, and Project-Based without Rehabilitation components only)

III. Program Descriptions

A. Supportive Housing Program (SHP)

1. Purpose and Eligible Activities

The SHP program promotes the development of supportive housing and services that help homeless persons transition from homelessness to living as independently as possible. Each project submitted under SHP must be classified under one of the program components described below. Eligible activities under this NOFA are limited to: acquisition, minor rehabilitation (*e.g.* reconfiguring a doorway for handicap accessibility), leasing, operating costs, and limited administrative expenses. Not eligible for funding are new construction, major rehabilitation, or services costs. New construction is not included, as this activity often requires a substantial amount of time to develop the project and the emphasis of this initiative is to provide housing as soon as possible. Supportive services are not an eligible activity because HUD wants to devote the resources it provides through this initiative to the provision of housing; the resources being made available by HHS and VA for this initiative can be used to provide supportive services needs in the project.

2. SHP Components

The following SHP components are eligible for funding under this NOFA:

a. Permanent Housing for Persons with Disabilities. Permanent Housing projects provide long-term housing and supportive services (provided with other funds) that are designed to enable homeless persons with disabilities to live as independently as possible. Permanent housing can be provided at one site or in scattered sites. Further, Permanent Housing may be tenant-based, meaning that the tenant can choose the housing. This is consistent with the philosophy of supported housing. This approach focuses on identification and engagement through assertive outreach to individuals and families, immediate placement in permanent housing, and availability of appropriate supportive services. All Permanent Housing for Persons with Disabilities projects must comply with the program size limitations, as described in Section 424(c) of the McKinney Act.

b. Safe Havens. Safe Havens are projects targeted to hard-to-reach homeless persons who have severe mental illness and are on the streets. The goal of a Safe Haven is to serve as a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to limited service demands. Tenants can move directly into housing with few explicit services required. It is hoped that after a period of stabilization in a Safe Haven, residents will be more willing to participate in services and referrals and will eventually be ready to move to more traditional forms of housing. Safe Havens may serve as an entry point to the service system and provide access to basic services such as food, clothing, bathing facilities, telephones, storage space, and a mailing address. Safe Havens are not appropriate housing for homeless families with disabilities.

The specific criteria that must be exhibited by a Safe Haven are:

- No limit on length of stay.
- Provision of 24-hour residence.
- Provision of private or semiprivate accommodations.
- Overnight occupancy limited to 25 persons.
- May also provide supportive services to eligible persons who are not residents on a drop-in basis.

B. Shelter Plus Care

1. Shelter Plus Care (S+C)—Purpose and Eligible Activities

Shelter Plus Care serves only homeless persons who have disabilities and may be administered on a tenant-, sponsor-, or project-based level. S+C components were designed to give applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities. Rental assistance provided through the S+C program must be matched in the aggregate by the recipient on a dollar for dollar basis with supportive services. Federal funds received from the other participating agencies under this NOFA are eligible to be counted as matching funds. Rental assistance is the only eligible activity for this program.

2. S+C Program Components

The following S+C program components are eligible for funding under this NOFA:

a. Tenant-Based S+C—Tenant-Based S+C assisted units may be of any type, and clients may retain the rental assistance even if they move, as long as they stay within a S+C unit. Assisted projects may provide supportive services to clients, either by the applicant or a third party, in a variety of ways, from structured to very low-demand.

b. Sponsor-Based S+C—Sponsor-Based S+C provides rental assistance through contract(s) between the grant recipient and a nonprofit organization(s), called a sponsor. The nonprofit organization may be a private nonprofit organization or a community mental health center established as a public nonprofit organization. The assisted units must be owned or leased by the sponsor. After a grant is awarded should the sponsor lose its capacity to own or lease the assisted units, the grantee must identify an alternate sponsor in order to continue to serve the original number of persons proposed to be served.

c. Project-Based without Rehabilitation S+C—Project-Based without Rehabilitation S+C provides rental assistance through a contract with a building owner(s). An applicant must enter into a contract with the building owner(s) for the full five-year period of assistance. The building owner must agree to accept eligible S+C participants to live in an assisted unit for this time period.

C. Match

Applicants must match Supportive Housing Program funds provided for acquisition and minor rehabilitation (new construction, major rehabilitation, and supportive services are not eligible activities under this collaborative NOFA) with an equal amount of funds from other sources; for operating costs, since by law SHP can pay no more than

75 percent of the total operating budget for supportive housing, applicants must provide at least 25 percent of the total annual operating costs. The cash source may be the applicant, the Federal Government, State and local governments, or private resources. In-kind contributions are not eligible as match under SHP.

Applicants must match rental assistance provided through the Shelter Plus Care Program on a dollar for dollar basis with supportive services.

D. Statutory and Regulatory Requirements

An applicant selected for funding as a result of the competition will be required to coordinate and integrate the homeless project with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, SSI, SSDI, and Healthcare for Homeless Veterans Program. In addition, as a condition for award, any governmental entity serving as an applicant must agree to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. This condition for award is intended to emphasize that States and units of general local government are primarily responsible for the care of these individuals, and to forestall attempts to use scarce McKinney-Vento Act funds to assist such persons in lieu of State and local resources.

E. Special Provisions Applicable to This Notice

1. Only new SHP and S+C projects, including expansions of HUD-funded existing projects, will be funded.

2. Any project submitted under this NOFA must be coordinated with the Continuum of Care plan for its region and must submit a certification of consistency with the applicable Continuum of Care plan.

3. Only the following components of the SHP will be funded under this NOFA: Permanent Housing and Safe Havens.

4. Only tenant-, sponsor-, and project-based without rehabilitation components of S+C will be funded.

5. The term of all proposed SHP projects must be three (3) years. The term of all proposed S+C projects must be five (5) years.

6. New construction and substantial rehabilitation activities will not be eligible SHP activities under this notice. Minor rehabilitation activities, such as those required to remove lead-based paint or conform a unit to ADA standards, are eligible. All other activities eligible under the SHP program are eligible for purposes of this NOFA. See Appendix 1—HUD for eligible activities.

7. Applicants are encouraged to use approaches that can rapidly move chronically homeless persons into housing with necessary supportive services.

8. All SHP and S+C statutory and regulatory provisions, other than those specifically amended by this NOFA, apply to the use of those funds.

F. Other Program-Specific Requirements

Where an applicant for Supportive Housing Program funding is a State or unit of general local government that utilizes one or more nonprofit organizations to administer the homeless assistance project(s), administrative funds provided as part of the SHP grant must be passed on to the nonprofit organization(s) in proportion to the administrative burden borne by them for the SHP project(s). States or units of general local government that pass on at least 50 percent of the administrative funds made available under the grant will be considered as having met this requirement. (**Note:** This requirement does not apply to the S+C Program, since paying the costs associated with the administration of these grants is ineligible by regulation. For the S+C program, administrative costs associated with the administration of rental assistance are eligible, but are capped at eight (8) percent of the total grant award).

G. Timeliness Standards

As an applicant, you are expected to initiate your approved projects promptly in accordance with the instructions of this announcement. In addition, if you fail to satisfy the following timeliness standards being established specifically for funding awarded under this collaborative NOFA, the awarded funding may be withdrawn in whole or in part:

1. Supportive Housing Program

- Your award may be deselected if you do not demonstrate site control within three (3) months of the date of your grant award letter.
- Your award may be deselected if the following additional timeliness standards are not met:

—You must complete any minor rehabilitation activities permitted under the terms of your SHP award within nine (9) months of the date of the grant award letter.

—You must begin all activities that may proceed independent of minor rehabilitation activities within six (6) months of the date of the grant award letter.

2. Shelter Plus Care Program Components

Your award may be deselected if you do not meet the following timeliness standard: For Tenant-based Rental Assistance, for Sponsor-based Rental Assistance, and for Project-based without Rehabilitation Rental Assistance, you must begin providing the rental assistance to at least a majority of the awarded units within six (6) months of the date of the grant award letter.

IV. Selection

A. Review, Rating, and Conditional Selection

The same review, rating, and conditional selection process will be used for all proposed SHP/PH, SHP/Safe Havens and S+C projects. The factors described in the General Section of this NOFA together with all agency-specific factors will be used to assign points. To review and rate applications, expert panels may be used. In order to obtain certain expertise and outside points of view, including views from other Federal agencies, these panels may include persons not currently employed by HUD, HHS or VA. Only those projects passing threshold criteria will be rated. Paragraphs (1), (2), and (3) below describe the threshold reviews that will be conducted. Paragraph (4) describes the HUD-specific rating factors that will be applied to those projects requesting housing funds.

1. Applicant eligibility

The identity of each applicant submitting an application in response to this component of the collaborative NOFA will be reviewed to ensure that each such entity meets the eligibility requirements of the program for which it is seeking assistance. If it is determined that these standards are not met, the project will be rejected.

2. Project eligibility

Proposed projects submitted in response to this component of the collaborative NOFA will be reviewed to determine if they meet the following eligibility standards. If it is determined that the following standards are not met by a specific project or activity, the project or activity will be rejected or reduced.

(a) The activities being proposed must meet the eligibility requirements as specified in this notice. Please note that for the SHP/PH, SHP/Safe Havens and S+C programs, these requirements are more restrictive than defined by program statute and regulation. At least one of the activities for which assistance is requested must be determined eligible or the proposed project will be rejected from the competition.

(b) The population to be served must meet the eligibility requirements as specified in this notice. Please note that for SHP/PH, SHP/Safe Havens and the S+C programs, these requirements are more restrictive than defined by program statute and regulation.

(c) The project must be cost-effective and such costs must not deviate substantially from the norm in the locale for the kind of activity being proposed.

3. Compliance With Fair Housing and Civil Rights Laws

(a) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a).

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) A judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

4. Rating Factors

The permanent housing section of the application will be scored using the following rating factors (total of 30 points):

a. Applicant Capacity. Up to 10 points will be awarded based on the project applicant's experience specifically in providing housing, especially for the population assisted by this NOFA. The points will also be based on the applicant's performance in administering housing activities, especially in serving the population to be assisted by this NOFA.

b. Timeliness. Up to 10 points will be based on the demonstrated ability of the applicant and project sponsor to execute the program in a timely manner. This includes the applicant and project sponsor's ability to achieve rapid project start-up (*e.g.* environmental review, site control, permitting, minor rehabilitation, and occupancy).

c. Project (Housing) Quality. Up to 10 points will be awarded based on the extent to which an applicant demonstrates how the housing is appropriate to the needs of the persons to be served. The application should demonstrate the following:

- How the type (*e.g.* apartments, group home) and scale (*e.g.* number of units, number of persons per unit) of the proposed housing will fit the needs of the participants.
- That the basic community amenities (*e.g.* medical facilities, grocery store, recreation facilities, schools, etc.) will readily be accessible to your clients.
- That the housing will be accessible to persons with disabilities in accordance with applicable laws.
- That services and treatment will be linked to permanent housing so that the target population will be sustained in that housing.
- That any innovative aspect, if included, of a proposed project is fully described and evidence of the unique nature of the project is demonstrated.
- The extent to which the project integrates program recipients into the community being served.

B. Action on Selected Applications

Selected applicants, including those conditionally selected, will be notified in writing. As necessary, conditionally selected applicants will subsequently be requested to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for the performance of an environmental review, where applicable; and such other documentation as specified in writing to the applicant, that confirms or clarifies information provided in the application. Conditionally selected applicants will be notified of the deadline for submission of such information. If a conditionally selected applicant is unable to meet any conditions for fund award within the specified timeframe, those funds may be withdrawn and instead used to select the next highest ranked application(s) from the competition for which there are sufficient funds available.

V. Application Submission Requirements

A. Required Materials

The application provides the application materials, including the SF–424 and certifications that must be used in applying for homeless assistance under this notice. In addition to the required narratives, the items that you must submit as part of the application for funding are the following:

1. SF–424
2. Applicant Certification
4. Consolidated Plan Certification(s)
5. Continuum of Care Plan Certification
6. Special Projects Certifications-Discharge Policy and Mainstream Programs
7. Disclosure of Lobbying Activities

B. Certification Requirements

The application also contains certifications that the applicant will comply with fair housing and civil rights requirements and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable State or unit of general local government, including the Analysis of Impediments to Fair Housing Choice and the Action Plan to address these

impediments. Projects funded under this NOFA will also coordinate with the regional Continuum of Care process and will provide a certification of consistency with the applicable Continuum of Care plan, if any. Projects funded under this NOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) or the Age Discrimination Act of 1974 (42 U.S.C. 6101).

VI. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

VII. Environmental, Local Resident Employment, and Relocation Requirements

A. Environmental Requirements

All assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. Section 208 of Pub. L. 106–377 (114 Stat. 1441, approved October 27, 2000) amended section 443 of the Stewart B. McKinney-Vento Homeless Assistance Act to provide that for purposes of environmental review, projects shall be treated as assistance for special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, and shall be subject to HUD's regulations implementing that section. The effect of this provision is that environmental reviews for project activities are to be completed by responsible entities (States or units of general local government) in accordance with 24 CFR part 58, whether or not the applicant is itself a State or a unit of general local government. Applicants (such as PHAs or nonprofit organizations) that are not States or units of general local government must request the unit of general local government to perform the environmental review. This statutory provision supersedes those portions of 24 CFR 582.230 and 583.230 that provide for automatic HUD environmental review in the case of applications from such entities. With this exception, conditional selection of projects is subject to the environmental review requirements of 24 CFR 582.230 and 583.230 as applicable. Recipients may not commit or expend any assistance or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(c), 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification from the responsible entity. The expenditure or commitment of assistance or nonfederal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration.

B. Local Resident Employment

To the extent that any housing assistance funded through this collaborative NOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement), then it is subject to section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

C. Relocation

The SHP and S+C programs are subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). These requirements are explained in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Any person or family that moves, even temporarily, as a direct result of acquisition, rehabilitation or demolition for a project that is assisted through one of these programs (whether or not HUD funded the acquisition, rehabilitation or demolition) is entitled to relocation assistance. Displacement that results from leasing a unit in a structure may also trigger relocation requirements. Relocation assistance can be expensive. To avoid unnecessary costs, it is important to provide occupants with timely information notices, including a general information notice to be sent at the time the application is submitted to HUD. HUD Handbook 1378 contains guideform information notices. The HUD field office can provide a copy of the handbook and copies of appropriate information booklets to be provided to occupants. Accordingly, if the site is occupied, the applicant should contact the HUD field office in the planning stage to obtain advice, including help in estimating the cost of required relocation assistance.

VIII. Authority

The Supportive Housing Program is authorized by Title IV, Subtitle C, of the Stewart B. McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), 42 U.S.C. 11381. Funds made available under this section of the collaborative NOFA for the Supportive Housing Program are subject to the program regulations at 24 CFR part 583. The funds are also subject to the requirements of this NOFA.

The Shelter Plus Care program is authorized by Title IV, Subtitle F, of the McKinney-Vento Act, 42 U.S.C. 11403. Funds made available under this section of the collaborative NOFA for the Shelter Plus Care program are subject to the program regulations at 24 CFR part 582. The funds are also subject to the requirements of this NOFA.

IX. Finding and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

APPENDIX I–HUD.—ELIGIBLE APPLICANTS AND ACTIVITIES

Elements	Supportive housing	Shelter plus care
Authorizing Legislation	Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act.	Subtitle F of Title IV of the McKinney-Vento Homeless Assistance Act.
Implementing Regulations	24 CFR part 583	24 CFR part 582.
Eligible Applicant(s)	• States • Units of general local government • Special purpose units of government such as Public housing agencies (PHAs). • Private nonprofit organizations • CMHCs that are public nonprofit organizations.	• States. • Units of general local government. • PHAs.
Eligible Components	• Permanent Housing for Persons with Disabilities. • Safe Havens	• Tenant-based. • Sponsor-based. • Project-based.
Eligible Activities [1] [2]	• Acquisition • Minor Rehabilitation • Leasing • Operating Costs • Administrative Costs (limited to 5% of the grant award).	• Rental assistance. • Costs of administering rental assistance (limited to 8% of the grant award).
Eligible Populations [2]	• Chronidcally Homeless Persons • Disabled Homeless Families	• Chronically Homeless Persons. • Disabled Homeless Families.
Term of Assistance	3 years	5 years.

[1] Homeless prevention activities are statutorily ineligible under these programs.
[2] Persons at risk of homelessness are statutorily ineligible for assistance under these programs.

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SECTION 3

HHS/SAMHSA SECTION

Billing Code 4210-29P

Section 3: HHS/SAMHSA Section—Substance Abuse Treatment, Mental Health Services and Supportive Services—25 points

I. Overview

A. Purpose

The purpose of the substance abuse and mental health services component of this collaborative NOFA is to ensure that the target population receives, as part of a comprehensive system of services, the mental health and substance abuse treatment they need to achieve the highest level of recovery possible. Specific objectives are to reduce or eliminate symptoms, increase independence and community functioning, and avoid relapse. Recognizing the high prevalence of co-occurring mental health and substance abuse disorders, another objective is to improve the effectiveness of mental illness and substance abuse treatment by ensuring that the appropriate level of service integration is achieved. To achieve these objectives, an overall goal is to increase the reliance on mainstream programs for funding behavioral health services to the maximum extent possible.

Background: People who experience chronic homelessness tend to have disabling mental health and substance abuse problems. Recent estimates suggest that at least 40 percent have substance use disorders and 20 percent have serious mental illnesses. Often individuals have more than one of these conditions. An estimated 50 percent of adults with serious mental illnesses who are homeless also have a co-occurring substance use disorder. Among veterans who are homeless, one-third to nearly one-half have co-occurring mental and addictive disorders. These problems not only contribute to persons' risk for becoming homeless, but also to the difficulty they experience in overcoming it.

People who are chronically homeless require a broad range of services and supports that are coordinated with each other and linked to permanent housing. SAMHSA has identified evidence-based and promising practices that are effective in preventing and ending homelessness among people with serious mental illnesses and substance use disorders. These include: outreach and engagement, housing with appropriate supports, multidisciplinary treatment teams/intensive case management, integrated treatment for co-occurring disorders, motivational interventions, modified therapeutic communities, and self-help programs.

B. Eligibility

Eligible entities are States, political subdivisions of States, Indian tribes and tribal organizations, and public or private non-profit entities, including community-based and faith-based providers of homeless services, health care, housing and other closely linked services for persons experiencing chronic homelessness. The lead applicant need not be a direct provider of substance abuse treatment or mental health services.

In addition to meeting these criteria, SAMHSA requires that any agency that will be using SAMHSA funds to provide substance abuse or mental health services must be licensed and have been providing services for a minimum of two years prior to the date of the application. The reason for this is to ensure that there is minimal start-up time required in providing services to the target population by experienced providers.

For proof of two years experience and licensing, you must include copies of licenses for this period or a copy of your Articles of Incorporation as an appendix in your application. Examples are copies of an organization's prior and current year operator's licenses, *i.e.*, (1) *Issue Date:* 5/1/2001, *Expiration Date:* 4/30/2002, (2) *Issue Date:* 5/1/2002, *Expiration Date:* 4/30/2003.

II. Amount Allocated

Approximately $7 million is available in FY2003 for this component and approximately 10 awards will be made. Subject to the availability of future funds, grantees will receive additional funds in grant years 2 and 3 for substance abuse and mental health services on a declining basis: 100 percent for Grant Year 1; 70 percent for Grant Year 2; and 40 percent for Grant Year 3. To qualify for continuation funds, grantees are required to demonstrate that the difference in grant amounts in Grant Years 2 and 3 is being offset by increasing revenue from mainstream financing resources such as Medicaid, Block Grants, State general funds, local sources, etc. The purpose of this provision is to increase long-term reliance on mainstream programs and to improve program sustainability after termination of discretionary grant funds.

In order to promote successful continuation by attending to mainstream financing opportunities early, applicants must address the types of mainstream funding that will be sought, an assessment of the extent of eligibility among the target population, projections of potential revenues and discussion of the administrative actions that will be taken to capture the target revenue. Special attention should be paid to needed billing and collection mechanisms.

III. Program Description

A. Allowable Activities

Funds must be used to provide substance abuse treatment, mental health services, and supportive services that promote entry to and maintenance in permanent housing. Examples of allowable activities in each of these areas are the following:

- Street outreach and engagement
- Assertive community treatment/intensive case management
- Supportive housing
- Substance abuse treatment including detox, residential treatment, intensive outpatient, and outpatient treatment
- Mental health services including treatment for trauma and post traumatic stress disorder
- Integrated/coordinated treatment for co-occurring disorders
- Motivational interventions
- Modified therapeutic communities
- Medications management
- Self-help programs
- Psychosocial rehabilitation
- Assistance in accessing income support and entitlement
- Supportive employment
- Discharge planning
- Parental skills training
- Child care and family support
- Transportation

Examples of how these services can be provided include the following:

- Strengthen or expand an existing program to include persons who are chronically homeless by providing street outreach and engagement.
- Provide treatment and services to persons participating in homeless programs.
- Provide treatment and supportive services to maintain persons in stable housing.
- Develop referral linkages with community service providers to create a ''no wrong door'' approach for accessing treatment and services.
- Enable participation in treatment and/or services by providing transportation or child care.
- Providing for the coordination efforts of partnering entities.
- Managing the implementation of the comprehensive approach.
- Developing a strategic plan for accessing mainstream programs and sustaining the initiative.
- Monitoring the evaluation of the comprehensive approach.
- Build linkages among substance abuse treatment providers and/or

mental health service providers, housing providers, and homeless service providers.

• Provide emergency funds to enable persons to remain housed, including purchase groceries or household supplies, pay utility bills, etc.

• Create sustainability of services by getting clients on Medicaid, Medicare, Supplemental Security Insurance (SSI) and Social Security Disability Insurance (SSDI). Using mainstream Federal, state and local resources (such as Mental Health Block Grant (MHBG), Substance Abuse Prevention and Treatment Block Grant (SAPTBG), Social Services Block Grant, Temporary Assistance for Needy Families (TANF) etc.) to fund services beyond this initiative.

• Train direct care providers and others in the system serving the target population about provision of substance abuse treatment and/or mental health services to persons who are homeless.

B. Funding Restrictions

SAMHSA funds may NOT be used to:

• Pay for housing (other than residential substance abuse treatment).

• Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).

• Carry out syringe exchange programs, such as the purchase and distribution of syringes and/or needles.

• Pay for treatment of diseases other than substance abuse and mental health disorders; *e.g.*, SAMHSA funds may not be used to pay for pharmacologies for HIV antiretroviral therapy, STDs, TB and hepatitis B and C.

IV. Application Selection Process

A. Funding Criteria

Decisions to fund a SAMHSA grant are based on:

1. Threshold requirements.

2. Technical Merit.

3. Availability of funds.

4. Evidence of non-supplantation of funds.

5. Continued funding contingent on ability to fund services in the second and third years of this initiative through other resources such as Medicaid, Mental Health Block Grant (MHBG), Substance Abuse Prevention and Treatment Block Grant (SAPTBG).

B. Threshold Requirements

Applications will not be accepted for review by SAMHSA and will be returned for the following reasons:

1. The applicant organization is ineligible.

2. Proof of at least two years of service provision and licensure by the lead applicant is not attached.

C. Agency-Specific Review Criteria for Technical Merit

The determination of the technical merit of the substance abuse and mental health section of the application will be based on the quality, feasibility and comprehensiveness of the project narrative, described in the SAMHSA Section of the Application Kit. A maximum of 25 points can be earned for specific behavioral health criteria. For example, a perfect score for Section A will result in a rating of 10 points.

D. SAMHSA Review Criteria:

1. Substance Abuse Treatment and Mental Health Services (10 Points)

Points will be awarded based on the extent to which the substance abuse and mental health services array proposed for clients of the grant conforms to identified needs, is accessible, appropriately coordinated or integrated, and is evidence-based.

2. Sustainability (7 Points)

Points will be awarded based on the thoroughness and feasibility of the applicant's plan to obtain mainstream funding for the substance abuse and mental health services offered to clients in years 2 and 3 of the grant program. The assessment of readiness to identify appropriate mainstream sources and to pursue billing and collection activity will form an important predictor of the applicant's ability to obtain continuation grant funding by meeting mainstream financing goals described above.

3. Evaluation/Methodology (3 Points)

Points will be awarded based on the extent to which the proposed local evaluation will ensure objective measurement of progress toward achieving the goals and objectives of the grant. The criteria will also address the extent to which the proposed output and outcome data collection will accommodate CMHS and CSAT GPRA data reporting requirements. Special emphasis will be placed on the applicant's ability to identify and enroll clients in mainstream entitlement programs and collect mainstream reimbursements for substance abuse and mental health treatment services.

4. Project Management: Implementation Plan, Organization, Staff, Equipment/Facilities, and Other Support (5 Points)

Points will be awarded based on the adequacy of resources dedicated to accomplishing the substance abuse and mental health objectives of the grant program. Resources include quantity and quality of proposed staffing, strength of implementation planning, and ability to leverage other behavioral health resources.

E. Evaluation Requirements

Applicants may allocate no more than 15 percent of grant funds to their local evaluation activities including collection of GPRA measures.

1. Government Performance and Results Act. The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies, focusing on results or outcomes in evaluating effectiveness of Federal activities and on measuring progress toward achieving national goals and objectives. Grantees must comply with GPRA data collection and reporting requirements, including the collection of CSAT and CMHS Core Client Outcomes.

2. Local Evaluation. Grantees will be expected to develop a plan for evaluating their programs. At minimum, the local evaluations should include both process and outcome evaluations using GPRA client outcome measures and other measures as appropriate. Grantees should describe linkages to GPRA measures.

F. Post-Award Requirements

SAMHSA will provide post award support to grantees through technical assistance on mental health and substance abuse services. Grantees will be required to attend (and, thus must budget for) one jointly sponsored SAMHSA/HRSA technical assistance meeting in the first year of the grant, and one meeting in each of the remaining years. Each meeting will be two days. A minimum of three persons must attend, which can include housing, mental health, and substance abuse representatives. Consumers are encouraged to attend. These meetings will be held in the Baltimore/Washington, DC area.

The applicant must notify the Single State Agency (SSA) within 30 days of receipt of an award. Notify the SSA for mental health for projects providing mental health services; the SSA for substance abuse for projects providing substance abuse treatment services; and the SSA for mental health and substance abuse if serving populations with co-occurring disorders.

BILLING CODE 4210–29–P

SECTION 4

HHS/HRSA SECTION

Billing Code 4210-29P

Section 4: HHS/HRSA Section—Health Resources and Services Administration With a Focus on Primary Health—25 Points

I. Overview

A. Purpose

To increase the access of chronically homeless persons and homeless families with a disabled adult member to cost-effective and integrated primary health care services provided by existing programs and providers, as part of an effort to eradicate chronic homelessness and eliminate health disparities for chronically homeless people.

It is the intent of HRSA to continue to support health services to chronically homeless people and disabled homeless families in these areas/locations given the continued need for cost-effective, community-based primary care services. Therefore, the proposed projects must exclusively serve chronically homeless individuals and/or disabled homeless families as defined in this notice.

Funding will be awarded pursuant to section 330 of the Public Health Service Act.

B. Eligible Applicants

Primary Health Care Services: Applicants are limited to existing Health Center Grantees (including Health Care for the Homeless grantees) currently funded under section 330 of the Public Health Service Act. Applications should be submitted as a proposed supplemental grant and will be funded as such.

Applicants are limited to existing Health Centers, since funding for this initiative is coming from the Health Center funding line and consequently the requirements of section 330 of the PHS Act apply to the recipients of those funds. In addition, existing Health Center grantees receive certain privileges, including coverage under the Federal Tort Claims Act, ability to receive higher Medicare and Medicaid reimbursement rates, and reduced price pharmaceuticals. It would be inappropriate to provide these privileges to a new group of grantees who had not been approved through the extensive, comprehensive application process to achieve section 330 Health Center status.

II. Amount Allocated

Approximately $3 million will be available from HHS/HRSA as supplemental awards to existing section 330 health centers in FY 2003 to fund primary health care services. HHS/HRSA will not award more than $300,000 per project per year.

The awarding of FY 2003 HHS funds is contingent on passage of a permanent HHS appropriation for FY 2003. Subject to availability of appropriations, funds may be available for FY 2004 and FY 2005.

III. Program Description

Health Centers (HCs) are designed to provide accessible, affordable personal health care services to low-income individuals and families. HCs provide family-oriented primary and preventive health care services for people living in rural and urban medically underserved communities and for medically underserved populations. Specifically, HCs provide services that include: primary and preventive health care; outreach; dental care; essential ancillary services; mental health and substance abuse services; case management services; and enabling services such as transportation.

HCs exist in areas where economic, geographic, or cultural barriers limit access to primary health care for a substantial portion of the population, and they tailor services to the needs of the community. HCs demonstrate cost effective responsiveness, empower underserved communities and populations, reduce infant mortality rates, lower hospital admission rates and length of hospital stays for patients, lower patients' health costs, and provide care for specific conditions that meets or exceeds protocols for the general population.

IV. Funding Criteria

A. The applicant thoroughly describes the proposed program for the delivery of primary health care and related services to be provided to the target population.

B. The health care program is designed in a manner that is appropriate to meet the unique needs of homeless people in the proposed service area.

C. The applicant presents evidence of arrangements in place for the delivery of each of the required services. Required services include:

—Primary health care;
—Provision of or arrangements for emergency health services;
—Referral for inpatient hospitalization;
—Case management services;
—Outreach services;
—Entitlement eligibility assistance;
—Supplemental/additional services, including oral health services; and,
—Provision of or arrangements for accessing mental health and substance abuse services.

D. The applicant provides, for each service offered, information on:

—The location of services;
—The service setting (*e.g.*, clinic, van, shelter site);
—The arrangements in place to ensure the availability of services (*i.e.*, whether through direct provision by the applicant or provision through subcontract or referral agreement);
—Arrangements to guarantee access to the services; and,
—Continuity of care.

E. Signed letters of commitment or memoranda of understanding are included for all subcontractor and referral arrangements.

V. Application Selection Process

Only those applications that satisfy the threshold criteria will be rated. The threshold criteria are:

A. Applicants for HRSA funds must be a section 330 Health Center program. A copy of the FY 2002 Notice of Grant Award must accompany the request for HRSA funds.

B. Health centers applying for HRSA funds must not be designated as an exceptional/high risk grantee at the time of application. Note that HRSA may exclude from funding any Health Center which is significantly out of compliance with section 330 program expectations.

An application must be given a satisfactory rating in order to receive further consideration. Those applications that are determined to be acceptable will be then reviewed for the comprehensive approach.

If an application does not meet the aforementioned threshold criteria, the entire application will be rejected.

VI. Application Submission

Applicants should submit: (1) A copy of the most recent Notice of Grant Award document from the Health Center program; (2) a completed Public Health Service Application Form 5161–1, including budget pages and a Project Narrative as described below.

A. Project Narrative

The Project Narrative describes your project and your project's relationship to the primary applicant or other providers in this collaboration. It is made up of the following sections:

1. Project Summary (Points: 8)

The project summary is intended to be a brief synopsis of the proposed design of the primary care component of the collaborative initiative.

The applicant should summarize the need for health services in the target population and the organization's proposed response to that need. The following issues should be addressed.

a. Overview of the Population. (1) Provide a brief description of the target

population for this project and the nature of their health care needs.

(2) Describe any major issues or barriers to care faced by the target population.

b. Overview of the Organization. (1) Provide a brief history of the organization proposing to provide primary care and related services, including a discussion of the size and nature of the client population currently being served.

(2) Describe the experience of the organization in meeting the needs of chronically homeless persons.

c. Identify unique characteristics and significant accomplishments of the organization.

2. Project Plan (Points: 15)

a. Relationship of HC to other providers in this collaboration.

b. Identify how many people will be served and the number of projected encounters at full operational capacity at the proposed new collaborative program.

c. Describe any unique characteristics regarding the health care needs of persons to be served under this initiative.

d. Describe the proposed service delivery model and the services to be provided.

e. Describe the proposed staffing for the new collaborative program.

f. Provide evidence of arrangements in place for the delivery of each of the required services. *Required services include:*

—Primary health care;
—Provision of or arrangements for emergency health services;
—Referral for inpatient hospitalization;
—Case management services;
—Outreach services;
—Entitlement eligibility assistance;
—Supplemental/additional services, including oral health services; and,
—Coordination with other providers of services, including providers of mental health and substance abuse services.

g. For each service offered, provide information on:

—The location of services;
—The service setting (*e.g.*, clinic, van, shelter site, patient's residence);
—The arrangements in place to ensure the availability of services (*i.e* whether through direct provision by the applicant or provision through subcontract or referral agreement);
—Arrangements to guarantee access to the services;
—Continuity of care; and,
—Coordination of care with other providers involved in the collaboration.

3. Readiness (Points: 2)

a. Where appropriate, include agreement from site sponsor to allow applicant organization to provide services at specified location(s).

b. Services must be available within 90 days of the award of program funds.

B. Budget Narrative

1. *Describe the annual budget for years 1, 2, and 3 in terms of:*

1. The total resources required to achieve the goals and objectives of the new collaborative program;

2. The expectations regarding Federal grant support and maximization of non-grant revenue relative to the proposed plan. The applicant must demonstrate that the Federal funds will not supplant other funds, and must make maximum use of third party revenues, including Medicaid;

3. The total cost per client;

4. The total grant dollars per client,

5. One-time minor capital needs; and

6. Applicant should itemize the estimated value of in-kind resources, including equipment, rent, personnel, renovations and alterations, pharmaceuticals, *etc.*

VII. Post-Award Requirements

HRSA will provide post-award support to grantees through technical assistance on primary health care services. Grantees will be required to attend (and, thus must budget for) one jointly sponsored SAMHSA/HRSA technical assistance meeting in the first year of the grant, and one meeting in each of the remaining years. Each meeting will be two days. A minimum of two persons must attend. These meetings will be held in the Baltimore/Washington, DC area.

BILLING CODE 4210–29–P

SECTION 5

VA SECTION

Billing Code 4210-29P

Section 5: VA Section—20 Points

I. Overview

Although funding will not be awarded directly to the recipient of the grant, funding is available for the VA facility that partners with the applicant. VA facilities can include medical centers or programs under the direction of medical centers including VA outpatient clinics. The applicant will be required to submit a plan that describes in detail how a collaborative relationship with VA will be created and sustained in an effort to provide services to chronically homeless veterans. The chronically homeless veterans to be served will be those veterans housed in or being provided services through the program developed by the collaborative initiative grant recipient and who meet the definition for homeless as put forth in this NOFA.

If it is anticipated that the project will not be serving veterans, the applicant will be asked to demonstrate why veterans will not be participating in the project. If it is anticipated that veterans will be served but it is unlikely a VA facility will be available to engage in partnering, the applicant will be asked to demonstrate other sources of providing substance abuse, mental health and primary care services for those chronically homeless veterans.

II. Amount Allocated

Up to $5.0 million will be made available for up to three years. Funds available for each project will be in an approximate amount equivalent to the proportionate yearly salary of full-time employees (FTE) to provide professional care or care-coordination/case management for chronically homeless veterans participating in the program and for FTE to assist in data collection and evaluation. Funding will be made available to the VA facility that enters into a collaborative relationship with the recipient of this grant.

III. Program Description

It is expected that these FTEs will provide necessary and appropriate care for chronically homeless veterans which can include but is not limited to: case management; direct medical care, mental health or substance abuse treatment; assistance with veterans benefits; vocational development; and housing referrals. The goal is to provide comprehensive, project- and community-linked substance abuse, mental health and primary care services for chronically homeless veterans. FTE assigned data evaluation duties will be responsible for data collection through participant interviews, tracking program participants and record keeping for the purposes of the program study.

IV. Application Selection Process

A. Review and Rating

The factors described in the General Section of this NOFA together with all agency-specific factors will be used to assign points.

To be eligible for the VA section of this NOFA, the application will undergo a VA threshold review prior to rating to ensure:

1. Forms, time and adequacy: application must be filed in the form prescribed by VA in the application process and within the time established in the NOFA;

2. Application eligibility: the applicant must be a non-profit or public entity, as described in the General Section of the NOFA;

3. Eligible population to be served: the population proposed to be served must be chronically homeless veterans. Homeless is defined in this NOFA. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. Such veterans must also be enrolled in VA's health care system.

B. Rating Criteria

The applicant who intends to apply under this VA section of the Joint NOFA must submit a signed Memorandum of Agreement (one original and four copies) between the applicant and its partnering VA facility, and a Program Plan (one original and four copies). Much of the information that will be used to determine the ranking of application and ultimately the likelihood of funding will be from the Comprehensive Section of the application.

Applications will be rated and ranked on the criteria listed below.

1. *Need:* Up to 5 points will be awarded based on the applicant's demonstrated understanding of the needs of the chronically homeless veteran population proposed to be served in the specified area or community. Ratings will be made based on the extent to which applicants demonstrate:

a. Identified gaps in services for chronically homeless veterans and how the program will address, and if appropriate, fill those gaps; and

b. An understanding of the homeless population to be served and its unmet housing, substance abuse, mental health, and primary care needs.

2. *Plan:* Up to 10 points will be awarded based on the extent to which the application presents a clear, well-conceived, and thorough plan for assisting chronically homeless veterans. The plan should include, at a minimum:

a. A detailed discussion of the nature of the collaboration between VA and the other partners;

b. How the collaboration will be sustained for the benefit of chronically homeless veterans; and

c. How the collaboration will be linked on a short-term as well as long-term, strategic level with the total project conceptualization and design.

3. *Ability:* Up to 5 points will be awarded based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. This includes activities involving housing, the planning and delivery of substance abuse and mental health treatment and primary care as well as activities regarding the accessing and/or delivery of VA benefits, medical and mental health care, and other VA related services.

Any applicant scoring a zero in the Need, Plan, or Ability criteria of the VA section, or any applicant scoring less than 8 points (40%) for a total score on all VA criteria will be eliminated from the competition and will not be eligible for any part of this grant funding.

Projects that will not be serving veterans will not be required to complete these sections of the application. However, the applicant will be asked to demonstrate how it was determined that services for chronically homeless veterans are not needed for the project.

V. Application Submission

A. Required Materials

The application provides the application materials. In addition to the narratives, the applicant will be required to submit a Memorandum of Agreement with its partnering VA facility.

B. Memorandum of Agreement (MOA)

To be eligible for the VA section of this NOFA, the applicant must submit a Memorandum of Agreement in addition to the application materials. The collaborative relationship must be documented in a jointly signed Memorandum of Agreement between a local VA facility and the applicant of this grant specifically stating the terms of the agreement. At a minimum, the terms of the agreement should include:

1. Number of chronically homeless veterans expected to be served by the grant recipient and the extent and level of services that will be provided by the VA facility;

2. Process and outcome measures clearly delineated and linked to service delivery and responsibilities for collection, compilation, and reporting of these measures; and

3. How services provided by the FTE funded under this section will be integrally linked in a comprehensive fashion with the intent of the collaborative initiative grant recipient's project and the strategic plans of the project in an effort to break the cycle of homelessness.

[FR Doc. 03–1801 Filed 1–24–03; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Monday,

January 27, 2003

Part VI

Department of Defense

General Services Adminstration

National Aeronautics and Space Administration

48 CFR Parts 2, 10, et al.

Federal Acquisition Regulations; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 13, 19, and 25

[FAC 2001–12; FAR Case 2002–026]

RIN 9000–AJ54

Federal Acquisition Regulation; Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296). Those sections increase the amount of the micro-purchase threshold and, in certain situations, the simplified acquisition threshold and provide streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The Act text covers solicitations issued during the one-year period starting on the date of enactment (November 25, 2002), but the Act does not become effective until 60 days after enactment (January 24, 2003).

DATES: *Effective Date:* January 24, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 28, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–026@gsa.gov*.

Please submit comments only and cite FAC 2001–12, FAR case 2002–026, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–12, FAR case 2002–026.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296)). These provisions, which are set forth in Title VIII, Subtitle F of the Act, provide Federal emergency procurement flexibilities.

Section 852 specifies that the authorities granted in the subtitle apply to acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued before November 25, 2003.

Section 853 increases the simplified acquisition threshold to $200,000 ($300,000 for contracts awarded and performed outside the United States) for acquisitions referred to in section 852 that are carried out in support of a humanitarian or peacekeeping operation or a contingency operation. The definition of simplified acquisition threshold in FAR 2.101 has been revised to reflect this change. As further required by section 853, FAR 19.502–2(a) has been amended to increase the small business reservation to mirror these increased thresholds.

Section 854 increases the micro-purchase threshold to $7,500 for acquisitions referred to in section 852. To implement this change, the rule modifies (1) the definition of micro-purchase threshold at FAR 2.101, (2) guidance on the use of micro-purchase authority at FAR 13.201, and (3) coverage at FAR 19.502–1 addressing the applicability of set-aside requirements.

Section 855 allows agencies to treat acquisitions referred to in section 852 as commercial items and removes the $5,000,000 limitation for the Test Program for Certain Commercial Items for these acquisitions. FAR 12.102(f), addressing the applicability of commercial item policies, and FAR Subpart 13.5 on the use of the commercial items test authority, have been revised accordingly.

Section 856 provides for the use of streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852 and waives the dollar limitations on sole source 8(a) acquisitions and HUBZone Sole Source awards for these acquisitions. Changes have been made at FAR 19.805–1 and 19.1306.

Section 858 calls for market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. This requirement is reflected in FAR 10.001.

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 changes may 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.* The Councils prepared an Initial Regulatory Flexibility Analysis (IRFA), and it is summarized as follows:

The increased thresholds are limited to apply to acquisitions of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts 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.* (FAC 2001–12, FAR Case 2002–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR coverage implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296), signed on November 25, 2002, which provides for urgently needed authorities to be used in the fight against, and recovery from terrorism.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 19, and 25

Government procurement.

Dated: January 16, 2003.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Adminstration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–12 are effective January 24, 2003.

Dated: January 16, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: January 16, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 16, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Adminstration.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 10, 12, 13, 19, and 25 as set forth below:

1. The authority citation for 48 CFR parts 2, 10, 12, 13, 19, and 25 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Contingency operation'' and ''Humanitarian or peacekeeping operation''; and revising the definitions ''Micro-purchase threshold'' and ''Simplified acquisition threshold'' to read as follows:

2.101 Definitions.

* * * * *

Contingency operation (10 U.S.C. 101(a)(13)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C, or any other provision of law during a war or during a national emergency declared by the President or Congress.

* * * * *

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

* * * * *

Micro-purchase threshold means $2,500, except it means—

(1) $2,000 for construction subject to the Davis Bacon Act; and

(2) $7,500 for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack, as described in 13.201(g)(1)(i), except for construction subject to the Davis Bacon Act (Public Law 107–296, Sec. 854). The threshold is $15,000 for acquisitions by or for the Department of Defense as described in 13.201(g)(1)(ii) (Public Law 107–107, Sec. 836(a)(1)(A)).

* * * * *

Simplified acquisition threshold means $100,000, except that—

(1) In the case of any contract to be awarded and performed, or purchase to be made outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means $200,000; or

(2) For acquisitions of supplies or services that, as determined by the head of the agency are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack—

(i) For any agency, in support of a humanitarian or peacekeeping or a contingency operation if initiated by a solicitation issued from January 24, 2003, to November 24, 2003 (Public Law 107–296, Sec. 853(a)), the term means—

(A) $200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

(ii) By or for the Department of Defense in support of a contingency operation if award is made and funds are obligated on or before September 30, 2003 (Public Law 107–107, Sec. 836(a)(1)(B)), the term means—

(A) $250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 10—MARKET RESEARCH

3. Amend section 10.001 by removing the word ''and'' at the end of paragraph (a)(2)(iii); and adding paragraph (a)(2)(v) to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) Agencies shall conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack (Public Law 107–296, Sec. 858); and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.102 by revising paragraph (f) to read as follows:

12.102 Applicability.

* * * * *

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items. This paragraph applies to solicitations issued by any agency from January 24, 2003, through November 24, 2003 (Public Law 107–296, Sec. 856).

(2) Acquisition of biotechnology supplies or services, for use to facilitate the defense against terrorism or biological attack against the United States, by or for the Department of Defense shall be considered as an acquisition of commercial items when award is made and funds are obligated on or before September 30, 2003 (Public Law 107–107, Sec. 836(a)(2)). The authority of this paragraph is in addition to and does not limit the authority of paragraph (f)(1) of this section. Nothing in this paragraph shall preclude a contracting officer from treating an acquisition described in this paragraph as one for a non-commercial item if a determination is made by the contracting officer that the purchase cannot be made at a fair and reasonable price using the policies of this part.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) and $15,000 for acquisitions as described in 13.201(g)(1)(ii)) and not exceeding $100,000 ($200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (*see* 19.000 and subpart 19.5). *See* 19.502–2 for exceptions.

* * * * *

6. Amend section 13.105 by revising the first sentence of paragraph (b) to read as follows:

13.105 Synopsis and posting requirements.

* * * * *

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1) and (f)(2), the contracting officer may use a combined synopsis and solicitation.

* * *

7. Amend section 13.201 by revising paragraph (g) to read as follows:

13.201 General.

* * * * *

(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, the temporary micro-purchase thresholds are

(i) $7,500 for acquisitions by or for any agency if the award is made from January 24, 2003, through November 24, 2003; and

(ii) $15,000 for acquisitions by or for the Department of Defense if award is made and funds are obligated on or before September 30, 2003.

(2) Purchases using this authority must have a clear and direct relationship to defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

8. Amend section 13.500 in paragraph (a) by removing the period from the end of the first sentence and adding 1'', except as provided in paragraph (e) of this section.'' in its place; and adding paragraph (e) to read as follows:

13.500 General.

* * * * *

(e) The $5,000,000 limitation provided in this subpart 13.5 does not apply to acquisitions of supplies or services using the authority provided by 12.102(f)(1). Notwithstanding the expiration of the test program specified in paragraph (d) of this section, authority to use simplified procedures under this paragraph applies to an acquisition when the solicitation is issued by any agency from January 24, 2003, through November 24, 2003.

9. Amend section 13.501 by—

a. Removing from paragraph (a)(1)(i) the phrase ''paragraphs (a)(2)(i) and (a)(2)(ii)'' and adding ''paragraph (a)(2)'' in its place;

b. Revising paragraph (a)(1)(ii);

c. In paragraph (a)(2)(ii) by adding ''but not exceeding $10,000,000,'' after ''$500,000,''; and

d. Adding paragraphs (a)(2)(iii) and (a)(2)(iv). The revised and added text reads as follows:

13.501 Special documentation requirements.

(a) * * *

(1) * * *

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Homeland Security Act (Public Law 107–296, section 856) as implemented at 12.102(f)(1).

(2) * * *

(iii) For a proposed contract exceeding $10,000,000 but not exceeding $50,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding $50,000,000 the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

10. Amend section 19.502–1 by revising paragraph (b) to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of $2,500 or less ($7,500 or less for acquisitions as described in 13.201(g)(1)(i) or $15,000 or less for acquisitions as described in 13.201(g)(1)(ii)), or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

11. Amend section 19.502–2 by revising the first sentence of paragraph (a) to read as follows:

19.502–2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (*see* subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) or $15,000 for acquisitions as described in 13.201(g)(1)(ii)), but not over $100,000 ($200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer

determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

* * *

* * * * *

12. Amend section 19.805–1 in paragraph (b)(1) by removing from the end of the sentence ''or''; in paragraph (b)(2) by removing the period at the end of the sentence and adding ''; or'' in its place; and adding paragraph (b)(3) to read as follows:

19.805–1 General.

(b) * * *

(3) The acquisition is conducted under the authority of the Homeland Security Act (Public Law 107–296) and—

(i) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(ii) The solicitation is issued during the period of January 24, 2003, through November 24, 2003; and

(iii) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302–1, 6.302–2, 6.302–6, or 6.302–7.

* * * * *

13. Amend section 19.903 by removing from the end of paragraph (b)(2) ''or''; redesignating paragraph (b)(3) as (b)(4); adding a new paragraph (b)(3); and by removing from newly designated paragraph (b)(4) ''13.201(g)'' and adding ''13.201(g)(1)(ii)'' in its place. The added text reads as follows:

19.903 Applicability.

* * * * *

(b) * * *

(3) Acquisitions of $7,500 or less for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack as described in 13.201(g)(1)(i); or

* * * * *

14. Amend section 19.1306 by revising the introductory text of paragraph (a)(2); and adding paragraph (c) to read as follows:

19.1306 HUBZone sole source awards.

(a) * * *

(2) Except as provided in paragraph (c) of this section, the anticipated price of the contract, including options, will not exceed—

* * * * *

(c) The contracting officer may award contracts exceeding the limits in paragraph (a)(2) of this section to HUBZone small business concerns on a sole source basis if the acquisition is conducted under the authority of the Homeland Security Act (Public Law 107–296, Sec. 856(b)) and—

(1) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(2) The solicitation is issued, during the period of January 24, 2003, through November 24, 2003; and

(3) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302–1, 6.302–2, 6.302–6, or 6.302–7.

PART 25—FOREIGN ACQUISITION

15. Amend section 25.1101 by revising the introductory text of paragraph (a)(1) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) Insert the clause at 52.225–1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) or $15,000 for acquisitions as described in 13.201(g)(1)(ii)) but not exceeding $25,000; and in solicitations and contracts with a value exceeding $25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

* * * * *

16. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225–13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding $2,500, $7,500 for acquisitions as described in 13.201(g)(1)(i), or $15,000 for acquisitions as described in 13.201(g)(1)(ii), unless an exception applies (*see* 25.701(a)(2)).

* * * * *

[FR Doc. 03–1687 Filed 1–24–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2001–12 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–12 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, General Services Administration, at (202) 501–4764.

Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack (FAR Case 2002–026)

This interim rule revises the Federal Acquisition Regulation (FAR) in order to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provide streamlined procedures for acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The

special increased thresholds and authorities under the Act apply to acquisitions resulting from solicitations issued before November 25, 2003.

Dated: January 16, 2003.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 03–1688 Filed 1–24–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
January 27, 2003

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are sponsoring a public meeting to discuss revising FAR 31.205-35, Relocation costs, to permit contractors the option of claiming employee relocation costs based on actual costs or on an appropriate lump-sum basis. A notice requesting public comments on the matter was published in the **Federal Register** at 67 FR 65468, October 24, 2002. After reviewing the public comments that were submitted, the councils would like to explore further the views of interested parties. Copies of the nine public comments can be viewed or printed from *http://www.arnet.gov/far/ProposedRules/.* Should the Councils decide to draft a proposed rule, an additional 60-day public comment period will be provided.

DATES: The public meeting will be held on February 6, 2003, at 9 a.m.

ADDRESSES: The public meeting will be held in the Rachel Carson Room, Department of Interior, 1849 C Street, NW., Washington, DC. The Rachel Carson Room is in the basement, next to the cafeteria. Closest Metro access is from the Farragut West station.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to the notice. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite Reimbursement of Relocation Costs on a Lump-Sum Basis (Notice).

Dated: January 21, 2003.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 03–1715 Filed 1–24–03; 8:45 am]

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Federal Register

Monday,

January 27, 2003

Part VIII

Department of Homeland Security

6 CFR Chapter I and Part 5

Freedom of Information Act and Privacy Act Procedures; Interim Final Rule

6 CFR Part 5

Production or Disclosure of Official Information in Connection With Legal Proceedings; Interim Final Rule

6 CFR Part 7

Classified National Security Information; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chapter I and Part 5

Freedom of Information Act and Privacy Act Procedures

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain information from the Office of the Secretary, Department of Homeland Security, under the Freedom of Information Act and the Privacy Act.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: D.E. Ogden, (202) 612–1951, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes procedures for the DHS Office of the Secretary necessary to implement the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Except to the extent a Department component has adopted separate guidance under FOIA or the Privacy Act, the provisions of this subpart shall to apply each component of the Department.

The Freedom of Information Act provides for the full disclosure of agency records and information to the public unless that information is exempted under clearly delineated statutory language. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here ensure that the Department of Homeland Security fully satisfies its responsibility to the public to disclose departmental information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions in the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by the Department.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. Furthermore, this Interim Final Rule generally parallels the procedures currently used by other agencies to implement the Freedom of Information Act and the Privacy Act. Accordingly the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553 (d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 6 CFR Part 5

Classified information, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth above, the Department of Homeland Security establishes 6 CFR Chapter I in new Title 6—Homeland Security, consisting at this time of part 5 to read as set forth below.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

Title 6—Homeland Security

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Freedom of Information Act

Sec.

5.1 General provisions.
5.2 Public reading rooms.
5.3 Requirements for making requests.
5.4 Responsibility for responding to requests.
5.5 Timing of responses to requests.
5.6 Responses to requests.
5.7 Classified information.
5.8 Business information.
5.9 Appeals.
5.10 Preservation of records.
5.11 Fees.
5.12 Other rights and services.

Subpart B—Privacy Act

5.20 General provisions.
5.21 Requests for access to records.
5.22 Responsibility for responding to requests for access to records.
5.23 Responses to requests for access to records.
5.24 Classified information.
5.25 Appeals.
5.26 Requests for amendment or correction of records.
5.27 Requests for an accounting of record disclosures.
5.28 Preservation of records.
5.29 Fees.
5.30 Notice of court-ordered and emergency disclosures.
5.31 Security of systems of records.
5.32 Contracts for the operation of record systems.
5.33 Use and collection of social security numbers.
5.34 Standards of conduct for administration of the Privacy Act.
5.35 Sanctions and penalties.
5.36 Other rights and services.

Appendix A to Part 5—FOIA/Privacy Act Offices of the Department of Homeland Security

Appendix B to Part 5—Public Reading Rooms of the Department of Homeland Security

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 et seq.); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

Subpart A—Freedom of Information Act

§ 5.1 General provisions.

(a)(1) This subpart A contains the rules that the Department of Homeland Security (Department) follows in processing requests for records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These rules should be read together with the FOIA, which provides additional information about access to records maintained by the Department. Requests made by individuals for records about themselves under the Privacy Act of 1974 (5 U.S.C. 552a), which are processed under subpart B of this part, are processed under this subpart also. Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Assistant Secretary for Public Affairs may be provided to the public without following this subpart).

(2) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance under FOIA, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.

(b) As used in this subpart, component means each separate bureau, office, board, division, commission, service, or administration of the Department.

§ 5.2 Public reading rooms.

(a) Records that are required to be maintained by the Department in a public reading room will be made available electronically at *www.dhs.gov/foia.* Each Department component will be responsible for determining which of the records it generates are required to be made available and to make those records available either in its own reading room or in the Department's central reading room. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

(b) The Department components maintain public reading rooms or areas at the locations listed below:

(1) Animal and Plant Health Inspection Service Library, 4700 River Road, Riverdale, MD 20737–1232;

(2) Plum Island Animal Disease Center, the APHIS address above or, USDA–ARS, 5601 Sunnyside Avenue, Building 1, Room 2248, Beltsville, MD 20705–5128;

(3) Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.bis.doc.gov/FOIA/Default.htm;*

(4) FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), NOAA Public Reference Facility, 1305 East-West Highway (SSMC4), Room 8627, Silver Spring, MD 20910;

(5) National Communication Service (a former component of the Defense Information Systems Agency) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://disa.mil/gc/foia/foia.html;*

(6) The address for each component and program listed below is: U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585:

(i) Energy Assurance Office;

(ii) Environmental Measurements Laboratory;

(iii) Nuclear Incident Response Team;

(iv) The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program;

(v) The life sciences activities related to microbial pathogens of Biological and Environmental Research Program;

(vi) The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program;

(vii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; and

(viii) The National Infrastructure Simulation and Analysis Center;

(7) The address for each component and program listed below is: Freedom of Information Act Officer at: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Independence Avenue, SW., Washington, DC 20201:

(i) Metropolitan Medical Response System;

(ii) National Disaster Medical System;

(8) Office of Emergency Preparedness please contact the Strategic National Stockpile Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Room 4103, Building 1, Atlanta, GA 30333;

(9) Immigration and Naturalization Service, 111 Massachusetts Avenue, NW., 2nd Floor, ULLICO Building, Washington, DC 20536;

(10) For the National Infrastructure Protection Center, the National Domestic Preparedness Office, and the Domestic Emergency Support Team: Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001;

(11) Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, 810 7th Street, NW., Room 5430, Washington, DC 20531;

(12) Visa Office, Department of State, 2201 C Street, NW., Washington, DC 20520;

(13) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591;

(14) Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590;

(15) United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book);

(16) The Federal Law Enforcement Training Center does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at http://www.fletc.gov/irm/foia/readingroom.htm;

(17) U.S. Customs Service, Freedom of Information Request, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229–0001 (for a list of field office reading room locations please consult 19 CFR 103.1);

(18) U.S. Secret Service, Main Treasury, Freedom of Information Request, 950 H Street, NW., Suite 3000, Washington, DC;

(19) Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Room 840, Washington, DC 20472 (for regional offices, consult your phone book);

(20) For the Federal Computer Incident Response Center and the Federal Protective Service: Central Office, GSA Headquarters, 1800 F Street, NW (CAI), Washington, DC 20405 (for regional offices, consult the phone book);

(c) Components shall also make reading room records created by the Department on or after November 1, 1996, available electronically via the component web-site. This includes each component's index of its reading room

records, which will indicate which records are available electronically.

§ 5.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of the Department by writing directly to the Department component that maintains those records. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 5.21(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) must be submitted. Your request should be sent to the component's FOIA office at the address listed in appendix A to part 5. In most cases, your FOIA request should be sent to a component's central FOIA office. (The functions of each component are summarized elsewhere in this title and in the description of the Department and its components in the ''United States Government Manual,'' which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*).) If you cannot determine where within the Department to send your request, you may send it to the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) *Agreement to pay fees.* If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees charged under § 5.11 up to $ 25.00, unless you seek a waiver of fees. In making your FOIA request, please indicate whether you are willing to pay for the request or desire a waiver. The component responsible for responding to your request ordinarily will confirm this commitment in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount. If you are seeking a waiver of fees you must provide a justification for your fee waiver request in accordance with the requirements of § 5.11(k). If your request for a fee waiver is denied, the component will notify you of that decision and will request an agreement from you to pay fees up to $25, or a greater or lesser amount specified by you. Your request shall not be considered received and further work shall not be done on it until you agree to pay fees. If you do not provide a firm commitment to pay the anticipated fee within the time period specified by the component, the request will be administratively closed.

§ 5.4 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for a record and has possession of that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for a record of that component.

(c) *Consultations and referrals.* When a component receives a request for a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or which should consider the information for classification, or which has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 5.5 Timing of responses to requests.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component determines to extend the time limits on that basis, the component shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. A request for expedited processing must be submitted to the component that maintains the record requested. Requests based on the categories in paragraphs (d)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 5.6 Responses to requests.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 5.3(c) and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 5.11 and shall disclose records to the requester promptly on payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing. The denial letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate

would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 5.9(a) and a description of the requirements of § 5.9(a).

§ 5.7 Classified information.

In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Associate General Counsel (General Law) shall take appropriate action to ensure compliance with Part 7 of this title.

§ 5.8 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA, if otherwise allowable, only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes, but is not limited to, corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed pursuant to exemption four and/or any other exemption of the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that in such a case the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

§ 5.9 Appeals.

(a) *Appeals of adverse determinations.* (1) If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. You must make your appeal in writing and it must be received by the Associate General Counsel (General Law) within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal

letter and the envelope ''Freedom of Information Act Appeal.''

(2) An adverse determination by the Associate General Counsel (General Law) will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

§ 5.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. A component ordinarily shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. Components shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) Noncommercial scientific institution means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) Representative of the news media, or news media requester, means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 5.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, components shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees shall be charged for all requests other than requests made by educational

institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (d) of this section. Components may charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure.

(ii) Fees for search time are assessed by the hourly wage of the personnel filling the request. These fees are subject to change. Currently, for each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be $4.00. Where a search and retrieval cannot be performed entirely by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional personnel) the fee will be $7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be $10.25 for each quarter hour of time spent by those personnel.

(iii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(iv) For requests requiring the retrieval of records from any Federal Records Center, certain additional costs may be incurred in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration, effective October 1, 2002.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as tapes or printouts, components will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review (the review done when a component determines whether an exemption applies to a particular record or record portion at the initial request level). No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) No fee will be charged whenever a total fee calculated under paragraph (c) of this section is less than the agency's cost to process the check. Currently, whenever a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (d)(4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(e) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be charged under this section will amount to more than $25.00, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $25.00, the request shall not be considered received and further work shall not be done on it until the requester makes a firm commitment to pay the anticipated total fee. Any such agreement should be memorialized by the requester in writing and must be received by the component within a time period specified by the component in its notice to the requester. If the requester does not provide a firm commitment to pay the anticipated fee within the time period specified by the component, the request will be administratively closed. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Department personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when a component chooses as a matter of administrative discretion to provide a special service (such as certifying that records are true copies or sending them by other than ordinary mail) the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, components will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make a advance payment before work is begun or continued on a request. Payment owed for work already completed (such as a prepayment before

copies are sent to a requester) is not an advance payment.

(2) Where a component determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 days of the date of billing, a component may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.'' The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.'' The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of fees.

(l) *Payment of outstanding fees.* The Department shall not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Privacy Act

§ 5.20 General provisions.

(a) *Purpose and scope.* (1) This subpart contains the rules that the Department of Homeland Security (Department) follows under the Privacy Act of 1974 (5 U.S.C. 552a). These rules should be read together with the Privacy Act, which provides additional information about records maintained

on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those by the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requests the benefit of both statutes.

(2) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance under the Privacy Act, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.

(b) *Definitions.* As used in this subpart:

(1) Component means each separate bureau, office, board, division, commission, service, or administration of the Department.

(2) Request for access to a record means a request made under Privacy Act subsection (d)(1).

(3) Request for amendment or correction of a record means a request made under Privacy Act subsection (d)(2).

(4) Request for an accounting means a request made under Privacy Act subsection (c)(3).

(5) Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(d) *Notice on Departmental use of (b)(1) exemption.* As a general matter, when applying the (b)(1) exemption for disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exemption.

(e) *Interim Retention of Authorities.* As an interim solution, all agencies and components under the Department will retain the necessary authority from their original purpose in order to conduct these necessary activities. This includes the authority to maintain Privacy Act systems of records, disseminate information pursuant to existing or new routine uses, and retention of exemption authorities under sections (j) and (k) of the Privacy Act, where applicable. This retention of an agency or component's authorities and information practices will remain in effect until this regulation is promulgated as a final rule, or the Department revises all systems of records notices. This retention of authority is necessary to allow components to fulfill their mission and purpose during the transition period of the establishment of the Department. During this transition period, the Department shall evaluate with the components the existing authorities and information practices and determine what revisions (if any) are appropriate and should be made to these existing authorities and practices. The Department anticipates that such revisions will be made either through the issuance of a revised system of records notices or through subsequent final regulations.

§ 5.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a Department of Homeland Security record about yourself by appearing in person or by writing directly to the Department component that maintains the record. Your request should be sent or delivered to the component's Privacy Act office at the address listed in appendix A to this part. In most cases, a component's central Privacy Act office is the place to send a Privacy Act request. For records held by a field office of the U.S. Customs Service, U.S. Secret Service, U.S. Coast Guard, or any other Department component with field offices, however, you must write directly to that Customs, Secret Service, Coast Guard, or other field office address, which can be found in most telephone books or by calling the component's central Privacy Act office. (The functions of each component are summarized elsewhere in this title and in the description of the Department and its components in the ''United States Government Manual,'' which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*). Some records are maintained under a government-wide systems of records notice, for example, Official Personnel Files are maintained under the authority of the Office of Personnel Management. In order to access records maintained under a government-wide notice, please send your request to the Privacy Act office of the original department or agency from which the component was transferred to the Department. If you cannot determine where within the Department to send your request, you may send it to the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528, and that office will forward it to the component(s) it believes most likely to have the records that you seek. For the quickest possible handling, you should mark both your request letter and the envelope ''Privacy Act Request.''

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable Department personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. A description of the Department's systems of records also may be found as part of the ''Privacy Act Compilation'' published by the National Archives and Records Administration's Office of the Federal Register. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 5.29, up to $25.00. The component responsible for responding to your request ordinarily shall confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of

birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(f) *Verification in the case of third party information requests.* If you are making a request for records concerning an individual on behalf of that individual, you must provide a statement from the individual verifying the identity of the individual as provided in paragraph (d) of this section. You must also provide a statement from the individual certifying the individual's agreement that records concerning the individual may be released to you.

§ 5.22 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily shall include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for access or amendment to a record of that component.

(c) *Consultations and referrals.* When a component receives a request for access to a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether the record is exempt from access and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or shall consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the underlying information.

(f) *Release of Medical Records.* Pursuant to 5 U.S.C. 552a(f)(3), where requests are made for access to medical records, including psychological records, the decision to release directly to the individual, or to withhold direct release, shall be made by a medical practitioner. Where the medical practitioner has ruled that direct release will cause harm to the individual who is requesting access, normal release through the individual's chosen medical practitioner will be recommended. Final review and decision on appeals of disapprovals of direct release will rest with the General Counsel.

(g) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(h) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the first component or agency, not any later date.

(i) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 5.23 Responses to requests for access to records.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 5.21(c) and provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once a component makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 5.29 and shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the component may disclose records to the requester directly, in a manner not unreasonably disruptive of its

operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under § 5.25(a) and a description of the requirements of § 5.25(a).

§ 5.24 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Associate General Counsel (General Law), shall take appropriate action to ensure compliance with Part 7 of this title.

§ 5.25 Appeals.

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. You must make your appeal in writing and it must be received by the Associate General Counsel (General Law) within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope ''Privacy Act Appeal.''

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision. An adverse determination by the Associate General Counsel (General Law) will be the final action of the Department.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section. An appeal will not be acted on if the request becomes a matter of litigation.

§ 5.26 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of a record of the Department about you by writing directly to the Department component that maintains the record, following the procedures in § 5.21. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is in more than one system of records, you should state that and address your request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving your request for amendment or correction of records, a component shall send you a written acknowledgment of its receipt of your request, and it shall promptly notify you whether your request is granted or denied. If the component grants your request in whole or in part, it shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies your request in whole or in part, it shall send you a letter signed by the head of the component, or the component head's designee, that shall state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction to the Associate General Counsel (General Law) in the same manner as a denial of a request for access to records (see § 5.25) and the same procedures shall be followed. If your appeal is denied, you shall be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Department's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the component involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under Privacy Act (5 U.S.C. 552a(j) or (k)) by notice published in the **Federal Register**.

§ 5.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept, such as disclosures that are made to employees within the agency and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Associate General Counsel (General Law) in the same manner as a denial of a request for access to records (see § 5.25) and the same procedures will be followed.

§ 5.28 Preservation of records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 5.29 Fees.

(a) Components shall charge fees for duplication of records under the Privacy Act in the same way in which they charge duplication fees under § 5.11.

(b) The Department shall not process a request under the Privacy Act from persons with an unpaid fee from any previous Privacy Act request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.30 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the component shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the component's receipt of the order, except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the component shall notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

§ 5.31 Security of systems of records.

(a) *In general.* Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls shall ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Procedures required.* Each component shall have procedures that restrict access to records to only those individuals within the Department who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

§ 5.32 Contracts for the operation of record systems.

Under 5 U.S.C. 552a(m), any approved contract for the operation of a record system will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that record system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

§ 5.33 Use and collection of social security numbers.

Each component shall ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 5.34 Standards of conduct for administration of the Privacy Act.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, the Department shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the Department;

(b) Collect information about an individual directly from that individual whenever practicable and when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

§ 5.35 Sanctions and penalties.

Under the provisions of the Privacy Act, 5 U.S.C. 552a, civil and criminal penalties may be assessed.

§ 5.36 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Appendix A to Part 5—FOIA /Privacy Act Offices of the Department of Homeland Security

I. For the following Headquarters components of the Department of Homeland Security, FOIA and Privacy Act requests should be sent to the Departmental Disclosure Office, Department of Homeland Security, Washington, DC 20528. The Headquarters components are:

A

Office of the Secretary
Office of the Deputy Secretary
Office of the Under Secretary for Management

B

Office of the General Counsel
Office of the Inspector General
Office of International Affairs
Office of Legislative Affairs
Office of Public Affairs
Office of National Capital Region Coordination
Office of Professional Responsibility
Office for State and Local Government Coordination

C

Directorate of Border and Transportation Security
Directorate of Emergency Preparedness and Response
Directorate of Information Analysis and Infrastructure Protection
Directorate of Science and Technology

II. Requests made to components that have transferred or will transfer into the Department of Homeland Security, should be sent as follows:

A. Former components of the Department of Agriculture:

1. Animal and Plant Health Inspection Service, USDA, APHIS, LPA, FOIA, 4700 River Road, Unit 50, Riverdale, MD 20737–1232
2. Plum Island Animal Disease Center; Submit request to the APHIS address above or, FOIA Coordinator, USDA–REE–ARS-Information Staff, 5601 Sunnyside Avenue, Bldg. 1, Room 2248, Mail Stop 5128, Beltsville, MD 20705–5128

B. Former components of the Department of Commerce:

1. Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security); Freedom of Information Coordinator, Bureau of Industry and Security, Room 6883, U.S. Department of Commerce, Washington, DC 20230
2. FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), National Oceanic and Atmospheric Administration, Public Reference Facility (OFAx2), 1315 East-West Highway (SSMC3), Room 10703, Silver Spring, MD 20910

C. Former components of the Department of Defense:

1. National Communications Service (A former component of the Defense Information Systems Agency), Defense Information Systems Agency, ATTN: RGC/FOIA Officer, 701 S. Courthouse Rd., Arlington, VA 22204–2199

D. Former components and programs of the Department of Energy:

The address for each component and program listed below is: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

1. Energy Assurance Office
2. Environmental Measurements Laboratory
3. Nuclear Incident Response Team
4. The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.
5. The life sciences activities related to microbial pathogens of Biological and Environmental Research Program.
6. The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program.
7. The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.
8. National Infrastructure Simulation and Analysis Center

E. Former components of the Department of Health and Human Services:

1. The address for each component and program listed below is: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Independence Avenue, SW., Washington, DC 20201;

a. Metropolitan Medical Response System,
b. National Disaster Medical System, and
c. Office of Emergency Preparedness
d. Strategic National Stockpile

2. Centers for Disease Control and Agency for Toxic Substances and Disease Registry, Attn: FOI Office, MS–D54, 1600 Clifton Road, NE., Atlanta, GA 30333.

F. Former components of the Department of Justice:

1. Immigration and Naturalization Service, Director, Freedom of Information/Privacy Act Program, Department of Justice, 425 Eye Street, NW., 2nd Floor, ULLICO Building, Washington, DC 20536 (for field offices, consult your phone book).
2. The address for each component and program listed below is: Federal Bureau of Investigation, Chief, FOIPA Section, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001;

a. National Infrastructure Protection Center,
b. National Domestic Preparedness Office, and
c. Domestic Emergency Support Team.

3. Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, Office of the General Counsel,

Attention: FOIA Staff, 810 7th Street, NW., Room 5400, Washington, DC 20531.

G. Former components of the Department of State:

Visa Office, Information and Privacy Coordinator, Office of Information Resources, Management Programs and Services, A/RPS/IPS, SA–2, Department of State, Washington, DC 20522–6001, Re: Freedom of Information Act Request.

H. Former components of the Department of Transportation:

1. Federal Aviation Administration, National Freedom of Information Act Staff, ARC–40, 800 Independence Avenue, SW., Washington, DC 20591 (for regional centers, consult your phone book).
2. Transportation Security Administration, TSA–1, FOIA Division, 400 Seventh Street, SW., Washington, DC 20590
3. United States Coast Guard, HQ USCG Commandant, G–CIM, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book).

I. Former components of the Department of Treasury:

1. Federal Law Enforcement Training Center, Freedom of Information Act Officer, Townhouse 389, Glynco, GA 31524
2. U.S. Customs Service, Freedom of Information Act Request, Mint Annex, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (for field offices, consult your phone book).
3. U.S. Secret Service, Freedom of Information Act Request, 950 H Street, NW., Suite 3000, Washington, DC 20223, e-mail *FOIA@USSS.Treas.gov.* Appeals should be addressed to the Deputy Director, United States Secret Service, Freedom of Information and Privacy Act Appeal Officer, at these same contact points.

J. Federal Emergency Management Agency: Federal Emergency Management Agency, Office of General Counsel, 500 C Street, SW., Room 840, Washington, DC 20472 (for regional offices, consult your phone book).

K. Former components of the General Services Administration:

1. For the Federal Computer Incident Response Center and the Federal Protective Service: Chief, FOIA Information Management Branch, GSA (CAIM), 1800 F Street, NW., Washington, DC 20405 (for regional offices, consult your phone book).

Appendix B to Part 5—Public Reading Rooms of the Department of Homeland Security

The Headquarters components of the Department of Homeland Security do not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.dhs.gov/FOIA.*

Entities that will transfer into the Department of Homeland Security maintain public reading rooms as follows:

1. Former components of the Department of Agriculture:

Animal and Plant Health Inspection Service Library, 4700 River Road, Riverdale, MD 20737–1232

Plum Island Animal Disease Center, the APHIS address above or, USDA–ARS, 5601 Sunnyside Avenue, Building 1, Room 2248, Beltsville, MD 20705–5128

2. Former components of the Department of Commerce:

The Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.bis.doc.gov/FOIA/Default.htm*

FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), NOAA Public Reference Facility, 1305 East-West Highway (SSMC4), Room 8627, Silver Spring, MD 20910

3. Former components of the Department of Defense:

The National Communication Service (A former component of the Defense Information Systems Agency) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://disa.mil/gc/foia/foia.html*

4. Former components and programs of the Department of Energy:

The address for each component and program listed below is: U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585

Energy Assurance Office
Environmental Measurements Laboratory
Nuclear Incident Response Team

The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.

The life sciences activities related to microbial pathogens of Biological and Environmental Research Program.

The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program.

The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

The National Infrastructure Simulation and Analysis Center

5. Former components of the Department of Health and Human Services:

For the Metropolitan Medical Response System, the National Disaster Medical System, and the Office of Emergency Preparedness please contact the Freedom of Information Act Officer at: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Independence Avenue, SW., Washington, DC 20201

Strategic National Stockpile, Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Room 4103, Building 1, Atlanta, GA 30333

6. Former components of the Department of Justice:

Immigration and Naturalization Service, 111 Massachusetts Avenue, NW., 2nd Floor, ULLICO Building, Washington, DC 20536

For the National Infrastructure Protection Center, the National Domestic Preparedness Office, and the Domestic Emergency Support Team: Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001

Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, 810 7th Street, NW., Room 5430, Washington, DC 20531

7. Former components of the Department of State:

Visa Office, Department of State, 2201 C Street, NW., Washington, DC 20520

8. Former components of the Department of Transportation:

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590

United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book).

9. Former components of the Department of Treasury:

The Federal Law Enforcement Training Center does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.fletc.gov/irm/foia/readingroom.htm*

U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (for a list of field office public reading rooms please consult 19 CFR 103.1).

U.S. Secret Service, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

10. Federal Emergency Management Agency:

Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Room 840 Washington, DC 20472 (for regional offices, consult your phone book)

11. Former components of the General Services Administration:

For the Federal Computer Incident Response Center and the Federal Protective Service: Central Office, GSA Headquarters, 1800 F Street, NW., (CAI), Washington, DC 20405 (for regional offices, consult your phone book)

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BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

RIN 1601–AA01

Production or Disclosure of Official Information in Connection With Legal Proceedings

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain the production or disclosure of official information in connection with litigation, including litigation to which the Department of Homeland Security is not a party.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen McClain, (202) 612–1952, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with DHS, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes procedures governing the disclosure of information in connection with litigation and certain other types of proceedings.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. This interim final rule generally parallels the procedures concerning the disclosure of information in litigation currently used by other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

Authority and Issuance

For the reasons set forth above, 6 CFR Part 5 is amended as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Part 5 is amended by adding subpart C (§§ 5.41 through 5.49) to read as follows:

Subpart C—Disclosure of Information in Litigation

Sec.

5.41 Purpose and scope; definitions.
5.42 Service of summonses and complaints.
5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.
5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.
5.45 Procedure when testimony or production of documents is sought; general.
5.46 Procedure when response to demand is required prior to receiving instructions.
5.47 Procedure in the event of an adverse ruling.
5.48 Considerations in determining whether the Department will comply with a demand or request.
5.49 Prohibition on providing expert or opinion testimony.

§ 5.41 Purpose and scope; definitions.

(a) This subpart C sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Department of Homeland Security (Department) or to any Department employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of the Department; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial or administrative authority as well as state legislative authorities (collectively, ''demands''), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, interviews, or other litigation-related matters, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, ''requests''), of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the demand or request is or was employed by the Department, or served as Secretary of the Department, as part of the performance of that person's duties or by virtue of that person's official status.

(b) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance governing the subject matter of a provision of this subpart, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart subject to the approval of the General Counsel of the Department.

(c) For purposes of this subpart, and except as the Department may otherwise determine in a particular case, the term employee includes all former Secretaries of Homeland Security and all employees of the Department of Homeland Security or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Homeland Security, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(d) For purposes of this subpart, the term litigation encompasses all pre-trial,

trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards (including the Board of Appellate Review), grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This subpart governs, *inter alia,* responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Department by Department of Homeland Security employees (present or former), or applicants for Department employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between the Department and a labor organization representing Department employees; or their successor agencies or entities.

(e) For purposes of this subpart, official information means all information of any kind, however stored, that is in the custody and control of the Department, relates to information in the custody and control of the Department, or was acquired by Department employees, or former employees, as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department.

(f) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958 on national security information (3 CFR, 1995 Comp., p. 333), the Government in the Sunshine Act, 5 U.S.C. 552b, the Department's implementing regulations or pursuant to congressional subpoena. Nothing in this subpart permits disclosure of information by the Department, its present and former employees, or the Secretary, that is protected or prohibited by statute or other applicable law.

(g) This subpart is intended only to inform the public about Department procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department or the United States.

(h) Nothing in this subpart affects the rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(i) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or litigation in which the United States has an interest; or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, *e.g.*, extradition, deportation.

§ 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents should be delivered or addressed to the Office of the General Counsel, United States Department of Homeland Security, Washington, DC, 20258. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) In the event any summons or complaint described in § 5.41(a) is delivered to an employee of the Department other than in the manner specified in this part, the recipient thereof shall decline to accept the proffered service and may notify the person attempting to make service of the Departmental regulations set forth herein.

(c) Except as otherwise provided §§ 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Office of the General Counsel.

(d) Although the Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, the Department recognizes that its employees should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage Department employees to accept service of process in appropriate cases.

(e) Documents for which the Office of the General Counsel accepts service in official capacity only shall be stamped ''Service Accepted in Official Capacity Only''. Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

§ 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Office of the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to the Secretary, the Department, or any component thereof, or its employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Department;

(2) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Department or which any Department employee acquired in the course and scope of the performance of his official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official Department duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Department employee other than in the manner prescribed in paragraph (a) of this section, such employee shall, after consultation with the Office of the General Counsel, decline service and direct the server of process to the Departmental regulations. If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

(c) Except as otherwise provided in this subpart, the Department is not an agent for service, or otherwise authorized to accept on behalf of its employees, any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official

duties except upon the express, written authorization of the individual Department employee to whom such demand or request is directed.

(d) Acceptance of such documents by the Office of the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

(e) Copies of any subpoenas, show cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, directed to former employees of the Department in connection with legal proceedings arising out of the performance of official duties shall also be served upon the Office of the General Counsel. The Department shall not, however, serve as an agent for service for the former employee, nor is the Department otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties, former employees who receive subpoenas, show cause orders, or similar compulsory process of federal or state courts should also notify in the component of the Department in which they were employed if the service involves their official duties while so employed.

(f) If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

§ 5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.

(a) No employee, or former employee, of the Department shall, in response to a demand or request, including in connection with any litigation, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by the Office of the General Counsel, or as authorized in § 5.44(b).

(b) No employee, or former employee, shall, in response to a demand or request, including in connection with any litigation, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by the Office of the General Counsel or the delegates thereof, as appropriate.

§ 5.45 Procedure when testimony or production of documents is sought; general.

(a) If official information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing, and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should provide a description using the types of identifying information suggested in § 5.3(b). Subject to § 5.47, Department employees may only produce, disclose, release, comment upon, or testify concerning those matters which were specified in writing and properly approved by the appropriate Department official designated in § 5.44. *See United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). The Office of the General Counsel may waive the requirement of this subsection in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Department may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The appropriate Department official designated in § 5.42 will notify the Department employee and such other persons as circumstances may warrant of its decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for Department employees in appropriate cases.

§ 5.46 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the appropriate Department official designated in § 5.44 renders a decision, the Department, if necessary, will request that the Department of Justice or the appropriate Department attorney take appropriate steps to stay, postpone, or obtain relief from the demand pending decision. If necessary, the attorney will:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this subpart;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a Department of Justice or appropriate Department attorney on the employee's behalf, the employee, if necessary, shall respectfully request from the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Department.

§ 5.47 Procedure in the event of an adverse ruling.

If a stay of, or other relief from, the effect of the demand in response to a request made pursuant to § 5.46 is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 5.46, or if the court or other authority rules that the demand must be complied with irrespective of the Department's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 5.48 Considerations in determining whether the Department will comply with a demand or request

(a) In deciding whether to comply with a demand or request, Department officials and attorneys shall consider, among any other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Department employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Department of its mission and duties; and

(8) The need to avoid involving the Department in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, *inter alia,* exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 5.49 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, Department employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official Department duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Any expert or opinion testimony by a former employee of the Department shall be excepted from 5.49(a) where the testimony involves only general expertise gained while employed at the Department.

(c) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the appropriate Department official designated in § 5.44 may, consistent with 5 CFR 2635.805, in their discretion and with the concurrence of the Office of the General Counsel, grant special, written authorization for Department employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the appropriate Department official designated in § 5.44, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former Department employee, that person shall immediately inform the Office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Department employee, or former employee, shall comply with the order. If so directed by the Office of the General Counsel, however, the employee, or former employee, shall respectfully decline to testify.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–1997 Filed 1–24–03; 11:34 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 7

RIN 1601–AA02

Classified National Security Information

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Executive Order 12958, entitled ''Classified National Security Information,'' as amended, by establishing the initial elements of the Department of Homeland Security's classified national security information regulations.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen McClain, (202) 612–1952, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes initial procedures necessary for the DHS to fulfill its obligations under Executive Order 12958, as amended, regarding classified national security information.

Executive Order 12958, as amended, was issued to update and revise the standards and process for classifying, safeguarding and declassifying classified national security information. The rule delegates to the Under Secretary for Information Analysis and Infrastructure Protection responsibility for developing the vast majority of information and internal operating instructions on classified information.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish initial procedures to facilitate the interaction of the public with the Department. Furthermore, this interim final rule generally parallels the procedures currently used by other agencies to fulfill their obligations under Executive Order 12958, as amended, regarding classified national security information.

Accordingly, the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This rule has been reviewed by the Information Security Oversight Office of the National Archives and Records Administration, pursuant to Executive Order 12958.

List of Subjects in 6 CFR Part 7

Classified information, Organization, functions, and authority delegations.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 7 to read as follows:

PART 7—CLASSIFIED NATIONAL SECURITY INFORMATION

Sec.

7.1 Purpose.
7.2 Scope.
7.3 Definitions.
7.11 Authority of the Under Secretary for Information Analysis and Infrastructure Protection.
7.21 Classification and declassification authority.
7.31 Mandatory review for declassification requests.

Authority: 5 U.S.C. 301; 6 U.S.C. 122; E.O. 12958, 60 FR 19825; 3 CFR, 1995 Comp., p. 333; E.O. 13142, 64 FR 66089, 3 CFR, 1999 Comp., p. 236; 32 CFR part 2001.

§ 7.1 Purpose.

The purpose of this part is to ensure that information within the Department of Homeland Security (Department) relating to the national security is classified, safeguarded, and declassified pursuant to the provisions of Executive Order 12958, as amended, and implementing directives from the Information Security Oversight Office of the National Archives and Records Administration (ISOO).

§ 7.2 Scope.

(a) All employees granted access to classified information by the Department are governed by this part, and by the standards in Executive Order 12958, as amended, any other applicable Executive Order, and directives promulgated under those Executive Orders. If any portion of this part conflicts with any portion of Executive Order 12958, as amended, or any other applicable Executive Order, the Executive Order shall apply. The provisions established by this subpart shall apply to each component of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component has adopted separate guidance with regard to classified national security information and access.

(b) This part applies to non-contractor personnel, to include state and local officials, and contractor personnel who are entrusted with classified national security information originated within or in the custody of the Department.

(c) This part is independent of and does not affect any classification procedures or requirements of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

(d) This part does not, and is not intended to, create any right to judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

§ 7.3 Definitions.

The terms defined or used in Executive Order 12958, as amended, and the implementing directives in 32 CFR part 2001, are applicable to this part.

§ 7.11 Authority of the Under Secretary for Information Analysis and Infrastructure Protection.

The Under Secretary for Information Analysis and Infrastructure Protection is designated as the senior agency official as required by section 5.6(c) of Executive Order 12958 and, except as specifically provided elsewhere in this part, is authorized to administer the Department's national security information program pursuant to Executive Order 12958, as amended.

§ 7.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Secretary and by officials to whom such authority is delegated in writing by the Secretary. As a minimum, the Under Secretary for Information Analysis and Infrastructure Protection will be delegated this authority. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Under Secretary for Information Analysis and Infrastructure Protection may delegate original Secret and Confidential classification authority to other officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§ 7.31 Mandatory review for declassification requests.

Any person may request classified information be reviewed for declassification pursuant to the mandatory declassification review provisions of section 3.6 of Executive Order 12958. Such requests shall be sent to the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, 1800 G Street, NW., Washington, DC.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–1995 Filed 1–24–03; 11:34 am]

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Dornier; comments due by 2-3-03; published 1-2-03 [FR 02-32879]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Rolls-Royce Deutschland Ltd.; comments due by 2-3-03; published 12-3-02 [FR 02-30345]

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Raytheon Aircraft Co. Model HS.125 Series 700A airplanes; comments due by 2-3-03; published 1-3-03 [FR 03-00063]

TRANSPORTATION DEPARTMENT

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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 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 11/P.L. 108–3

National Flood Insurance Program Reauthorization Act of 2003 (Jan. 13, 2003; 117 Stat. 7)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
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CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
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Subscription (mailed as issued)		298.00	2000
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Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.