2–7–03 Friday
Vol. 68 No. 26 Feb. 7, 2003
Pages 6339–6602

Federal Register

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0503–AA25

Appeal of Oral Decisions Under the Rules of Practice

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is amending the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes. This final rule amends the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes to provide that any appeal to the Judicial Officer from an oral decision of an administrative law judge must be filed within 30 days after the oral decision is issued. The Office of the Secretary is also making a number of minor, nonsubstantive changes to the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Patrice Harps, Deputy Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2309, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Background

Appeal to the Judicial Officer

The rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151) (referred to as the ''uniform rules'' below) provide that an administrative law judge may issue an oral or written decision. Current 7 CFR 1.142(c)(2) provides that if an administrative law judge orally announces a decision, a copy of the decision shall be furnished to the parties by the Hearing Clerk. Irrespective of the date a copy of the decision is mailed, the issuance date of the oral decision is the date the decision is orally announced. Current 7 CFR 1.145(a) provides that a party who disagrees with an administrative law judge's decision may appeal to the Judicial Officer within 30 days after receiving service of the administrative law judge's decision.

The Judicial Officer has held that an appeal from an oral decision must be filed within 30 days after the date the administrative law judge orally announces the decision. *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 344 (2000) (order denying late appeal); *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 351 (2000) (order denying petition for reconsideration). On appeal, the United States Court of Appeals for the District of Columbia Circuit held that current 7 CFR 1.142(c)(2) and 7 CFR 1.145(a) are ambiguous because the Secretary of Agriculture did not give fair notice that the uniform rules require an appeal to be filed within 30 days after the administrative law judge orally announces a decision. *PMD Produce Brokerage Corp.* v. *U.S. Department of Agriculture*, 234 F.3d 48 (D.C. Cir. 2000).

The Office of the Secretary is amending 7 CFR 1.145(a) to eliminate the ambiguity found by the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Office of the Secretary is amending 7 CFR 1.145(a) to provide that any appeal to the Judicial Officer from an oral decision issued by an administrative law judge must be filed within 30 days after the administrative law judge issues the oral decision.

Miscellaneous Changes

The Office of the Secretary is also making a number of minor, nonsubstantive changes.

The uniform rules are applicable to adjudicatory proceedings under the statutory provisions listed in 7 CFR 1.131(a). One of the statutory provisions listed in current 7 CFR 1.131(a) is the ''Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221).'' Sections 502 and 505 of the Packers and Stockyards Act were repealed by section 10 of the Poultry Producers Financial Protection Act of 1987. Therefore, in order to reflect the 1987 amendment to the Packers and Stockyards Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Packers and Stockyards Act to read ''Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221).''

Current 7 CFR 1.131(a) also lists the ''Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a)).'' The Perishable Agricultural Commodities Act was amended by the Perishable Agricultural Commodities Act Amendments of 1995 on November 15, 1995. Section 11 of the Perishable Agricultural Commodities Act Amendments of 1995 added section 8(e) to the Perishable Agricultural Commodities Act which provides for the assessment of civil penalties for violations of the Perishable Agricultural Commodities Act after an adjudicatory proceeding conducted by the Secretary. These proceedings are currently conducted in accordance with the uniform rules. Therefore, in order to reflect the 1995 amendment to the Perishable Agricultural Commodities Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Perishable Agricultural Commodities Act by adding a reference to section 8(e) and to the section in the United States Code in which section 8(e) is codified, 7 U.S.C. 499h(e). The Office of the Secretary is also correcting the reference to section ''1(9)'' to read ''1(b)(9)'' and adding a reference to the section in the United States Code in which section 1(b)(9) of the Perishable Agricultural Commodities Act is codified, 7 U.S.C. 499a(b)(9).

Current 7 CFR 1.131(a) also lists the ''United States Grain Standards Act, sections 7(g)(3), 9, (footnote 2) 10, and 17A(d) (7 U.S.C. 79(g)(3), 85, 86).'' Footnote 2 states: ''[t]he rules of practice in this subpart are applicable to formal proceedings under section 9 of the United States Grain Standards Act for

refusal to renew, or for suspension or revocation of a license if the respondent requests that such proceeding be subject to the administrative procedure provisions in 5 U.S.C. 554, 556, and 557. If such a request is not made, the rules of practice in 7 CFR part 26, subpart C shall apply.'' Title 7 CFR part 26, subpart C, was deleted, effective April 11, 1980 (45 FR 15873). Therefore, the Office of the Secretary is removing footnote 2 and the reference to footnote 2 in 7 CFR 1.131(a). The Office of the Secretary is also adding a reference to the section in the United States Code in which section 17A(d) of the United States Grain Standards Act is codified, 7 U.S.C. 87f–1(d).

The Office of the Secretary is also: (1) Correcting cross-references to regulations and statutes in 7 CFR 1.132, 7 CFR 1.133(b)(2), 7 CFR 1.136(c), 7 CFR 1.137(b), 7 CFR 1.141(e)(2), and 7 CFR 1.144(c); (2) making editorial changes in 7 CFR 1.131(b), 7 CFR 1.141(b)(1) (redesignated footnote 2), 7 CFR 1.142(c)(4), 7 CFR 1.143(d), 7 CFR 1.144(c)(13), 7 CFR 1.147(h), and 7 CFR 1.148(a)(3) for clarity and to correct typographical errors; and (3) eliminating gender-specific references in 7 CFR 1.141(e)(2).

5 U.S.C. 553, 601, and 804

This rule amends provisions of the rules of practice governing the conduct of certain adjudicatory proceedings before the Secretary of Agriculture. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and this rule may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, 7 CFR part 1 is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

§ 1.131 [Amended]

2. Section 1.131 is amended as follows:

a. In paragraph (a), the reference to ''Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221)'' is removed and ''Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221)'' is added in its place.

b. In paragraph (a), the reference to ''Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))'' is removed and ''Perishable Agricultural Commodities Act, 1930, sections 1(b)(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 8(e), 9, and 13(a) (7 U.S.C. 499a(b)(9), 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499h(e), 499i, 499m(a))'' is added in its place.

c. In paragraph (a), footnote 2 and the reference to footnote 2 are removed.

d. In paragraph (a), the reference to ''(7 U.S.C. 79(g)(3), 85, 86)'' is removed and ''(7 U.S.C. 79(g)(3), 85, 86, 87f-1(d))'' is added in its place.

e. In paragraph (b)(1), the period is removed immediately after the word ''service'' and a semicolon is added in its place.

f. In paragraph (b)(2), the period is removed immediately after the reference to ''(9 CFR parts 160, 161)'' and a semicolon is added in its place.

§ 1.132 [Amended]

3. In § 1.132 the definition of ''Petitioner'' is amended by removing the reference to ''7 U.S.C. 499a(9)'' and adding ''7 U.S.C. 499a(b)(9)'' in its place.

§ 1.133 [Amended]

4. In § 1.133, paragraph (b)(2) is amended by removing the reference to ''7 CFR 47.47–47.68'' and adding a reference to ''§§ 47.47–47.49 of this title'' in its place; and by removing the reference to ''7 U.S.C. 499a(9)'' and adding a reference to ''7 U.S.C. 499a(b)(9)'' in its place.

§ 1.136 [Amended]

5. In § 1.136, paragraph (c), the reference to ''§ 1.136(a)'' is removed and the words ''paragraph (a) of this section'' are added in its place.

§ 1.137 [Amended]

6. In § 1.137, paragraph (b) is amended by removing the reference to ''7 U.S.C. 499a(9)'' and adding a reference to ''7 U.S.C. 499a(b)(9)'' in its place.

§ 1.141 [Amended]

7. Section 1.141 is amended as follows:

a. In paragraph (b)(1), footnote 3 is redesignated as footnote 2 and is amended by removing the letter ''z'' immediately after the period at the end of the footnote.

b. In paragraph (e)(2), the reference to ''7 U.S.C. 499a(9)'' is removed and ''7 U.S.C. 499a(b)(9)'' is added in its place; and the word ''his'' is removed both times it appears and the word ''the'' is added in its place.

§ 1.142 [Amended]

8. In § 1.142, paragraph (c)(4) is amended by adding the words ''final and'' immediately before the word ''effective''.

§ 1.143 [Amended]

9. In § 1.143, paragraph (d) is amended by removing the word ''their'' and adding the words ''the Judge's or Judicial Officer's'' in its place.

§ 1.144 [Amended]

10. Section 1.144 is amended as follows:

a. In paragraph (c), the introductory text is amended by removing the word ''elsewhere''; and by removing the word

''part'' and adding the word ''subpart'' in its place.

b. Paragraph (c)(13) is amended by adding the word ''and'' immediately after the semicolon.

11. In § 1.145, paragraph (a) is revised to read as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

* * * * *

§ 1.147 [Amended]

12. In § 1.147, paragraph (h), the word ''extened'' is removed and the word ''extended'' is added in its place.

§ 1.148 [Amended]

13. In § 1.148, paragraph (a)(3), the word ''leat'' is removed and the word ''least'' is added in its place.

14. In § 1.149 footnote 4 is redesignated as footnote 3.

Done in Washington, DC this 31st day of January, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–3059 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330 and 354

9 CFR Parts 4, 11, 12, 49, 50, 51, 52, 53, 54, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 85, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 122, 123, 124, 130, 145, 147, 160, 161, 162, 166

[Docket No. 02–076–1]

Animal Health Protection Act; Revisions to Authority Citations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in title 7, chapter III, and title 9, chapter I, to reflect the enactment of the Animal Health Protection Act (Pub. L. 107–171, 116 Stat. 494, 7 U.S.C. 8301 *et seq.*) in our lists of legal authorities. We are also removing or revising citations and references to animal health statutes that were repealed by the Animal Health Protection Act. In addition, we are updating the authority citations throughout our regulations in titles 7 and 9, where appropriate, to remove duplicative or outdated citations and are making other nonsubstantive editorial changes in the regulations for the sake of clarity.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Howard, Chief, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, (301) 734–5957.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum titled ''Delegations of Authority Farm Security and Rural Investment Act of 2002 (FSRIA),'' dated July 10, 2002, the Secretary of Agriculture delegated to the Animal and Plant Health Inspection Service (APHIS) the authority to carry out Subtitle E of FSRIA, known as the Animal Health Protection Act (AHPA) (Subtitle E, Pub. L. 107–171, 116 Stat. 494, 7 U.S.C. 8301 *et seq.*). In this document, we are amending titles 7 and 9 of the Code of Federal Regulations (referred to below as the regulations) to reflect the AHPA in our lists of legal authorities, update authority citations, and remove references to statutes that were repealed by the AHPA.

The AHPA repealed the following statutes:

1. Pub. L. 97–46 (7 U.S.C. 147b);
2. Section 101(b) of the Act of September 21, 1944 (7 U.S.C. 429);
3. The Act of August 28, 1950 (7 U.S.C. 2260);
4. Section 919 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2260a);
5. Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306);
6. Sections 6 through 8 and 10 of the Act of August 30, 1890 (21 U.S.C. 102 through 105);
7. The Act of February 2, 1903 (21 U.S.C. 111, 120 through 122);
8. Sections 2 through 9, 11, and 13 of the Act of May 29, 1884 (21 U.S.C. 112, 113, 114, 114a, 114a–1, 115 through 120, 130);
9. The first section and sections 2, 3, and 5 of the Act of February 28, 1947 (21 U.S.C. 114b, 114c, 114d, 114d–1);
10. The Act of June 16, 1948 (21 U.S.C. 114e, 114f);
11. Pub. L. 87–209 (21 U.S.C. 114g, 114h);
12. The third and fourth provisos of the fourth paragraph under the heading ''Bureau of Animal Industry'' of the Act of May 31, 1920 (21 U.S.C. 116);
13. The first section and sections 2, 3, 4, and 6 of the Act of March 3, 1905 (21 U.S.C. 123 through 127);
14. The first proviso under the heading ''General expenses, Bureau of Animal Industry'' under the heading ''BUREAU OF ANIMAL INDUSTRY'' of the Act of June 30, 1914 (21 U.S.C. 128);
15. The fourth proviso under the heading ''Salaries and Expenses'' under the heading ''Animal and Plant Health Inspection Service'' of title I of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (21 U.S.C. 129);
16. The third paragraph under the heading ''MISCELLANEOUS'' of the Act of May 26, 1910 (21 U.S.C. 131);
17. The first section and sections 2 through 6 and 11 through 13 of Pub. L. 87–518 (21 U.S.C. 134 through 134h);
18. Pub. L. 91–239 (21 U.S.C. 135 through 135b);
19. Sections 12 through 14 of the Federal Meat Inspection Act (21 U.S.C. 612 through 614); and
20. Chapter 39 of title 46, United States Code.

In this document we are also making other changes to the regulations, not related to enactment of the AHPA. We are:

1. Updating or removing from the regulations several outdated or extraneous authority citations;
2. Correcting several erroneous or outdated specific references to material in the U.S. Code and Code of Federal Regulations; and

3. Making other nonsubstantive editorial changes to enhance the clarity and usefulness of the regulations.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Parts 49, 51, 52, 53, 70, 73, and 79

Administrative practice and procedure, Animal diseases, Cattle, Goats, Hogs, Indemnity payments, Livestock, Poultry and poultry products, Pseudorabies, Quarantine, Reporting and recordkeeping requirements, Scrapie, Sheep, Swine, Transportation.

9 CFR Parts 93, 94, 98, 99, and 124.

Administrative practice and procedure, Animal biologics, Animal diseases, Imports, Livestock, Meat and meat products, Milk, Patents, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Parts 130, 161, and 166

Animals, Birds, Diagnostic reagents, Exports, Hogs, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests, Veterinarians.

Accordingly, we are amending 7 CFR parts 330 and 354 and 9 CFR parts 4, 11, 12, 49, 50, 51, 52, 53, 54, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 85, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 122, 123, 124, 130, 145, 147, 160, 161, 162, and 166 as follows:

Title 7—Agriculture

PART 330—PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

2. In § 330.400, paragraph (f)(2) is revised to read as follows:

§ 330.400 Regulation of certain garbage.

* * * * *

(f) * * *

(2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

* * * * *

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

3. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Title 9—Animals and Animal Products

PART 4—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE ANIMAL WELFARE ACT

4. The authority citation for part 4 is revised to read as follows:

Authority: 7 U.S.C. 2149 and 2151; 7 CFR 2.22, 2.80, and 371.7.

PART 11—HORSE PROTECTION REGULATIONS

5. The authority citation for part 11 is revised to read as follows:

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

PART 12—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE HORSE PROTECTION ACT

6. In part 12, the citations ''(84 Stat. 1406; 15 U.S.C. 1828)'' that appear following the regulatory text of §§ 12.1 and 12.10 are removed and an authority citation for part 12 is added to read as follows:

Authority: 15 U.S.C. 1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

PART 49—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

7. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 49.1 [Amended]

8. In section 49.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: ''The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).''.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

9. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

10. The authority citation for part 51 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 51.1 [Amended]

11. In § 51.1, the definition of *recognized slaughtering establishment* is amended by removing the words ''Meat Inspection Act (21 U.S.C. 601–695)'' and adding the words ''Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*)'' in their place.

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

12. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 52.1 [Amended]

13. In § 52.1, the definition of *recognized slaughtering establishment* is amended by removing the citation ''(21 U.S.C. 601–695)'' and adding the citation ''(21 U.S.C. 601 *et seq.*)'' in its place.

PART 53—FOOT–AND–MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

14. The authority citation for part 53 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 53.3 [Amended]

15. Section 53.3 is amended by removing the citation ''(21 U.S.C. 112, 113, 115, 117, 120, 121, 134b)'' that follows paragraph (d).

PART 54—CONTROL OF SCRAPIE

16. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

17. The authority citation for part 70 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 70.1 [Amended]

18. In § 70.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: ''The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).''.

PART 71—GENERAL PROVISIONS

19. The authority citation for part 71 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

20. The authority citation for part 72 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 73—SCABIES IN CATTLE

21. The authority citation for part 73 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

22. In § 73.1b, the first sentence is revised to read as follows:

§ 73.1b Quarantine policy.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary may promulgate regulations and may prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance as the Secretary determines necessary to prevent the introduction or dissemination of any pest or disease of livestock. * * *

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

23. The authority citation for part 74 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

24. The authority citation for part 75 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 77—TUBERCULOSIS

25. The authority citation for part 77 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 78—BRUCELLOSIS

26. The authority citation for part 78 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 79—SCRAPIE IN SHEEP AND GOATS

27. The authority citation for part 79 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 79.2 [Amended]

28. In § 79.2, paragraph (f)(3), the second-to-last sentence is amended by removing the citation ''21 U.S.C. 122 and 134e'' and adding the citation ''7 U.S.C. 8313'' in its place.

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

29. The authority citation for part 80 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 85—PSEUDORABIES

30. The authority citation for part 85 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 89—STATEMENT OF POLICY UNDER THE TWENTY-EIGHT HOUR LAW

31. The authority citation for part 89 is revised to read as follows:

Authority: 49 U.S.C. 80502; 7 CFR 2.22, 2.80, and 371.4.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

32. The authority citation for part 91 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

33. The authority citation for part 92 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

34. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

35. In § 93.101, paragraph (d)(1)(ii) is amended by removing the words ''as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)'', and by removing the words ''section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.106 [Amended]

36. Section 93.106 is amended as follows:

a. In paragraph (a), by removing the words '', in accordance with the provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)''.

b. In paragraph (b)(4), by removing the words '', in accordance with § 2 of the Act of July 2, 1962 (21 U.S.C. 134a)''.

c. In paragraph (c)(5)(iii), in the first paragraph of the text of the cooperative and trust fund agreement, by removing the words ''section 2 of the Act of February 2, 1903, as amended, section 11 of the Act of May 29, 1884, as amended, and section 4 of the Act of July 2, 1962 (21 U.S.C. 111, 114a, and 134c, respectively),'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.201 [Amended]

37. In § 93.201, paragraph (b)(1)(ii) is amended by removing the words ''as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)'', and by removing the words ''section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.202 [Amended]

38. In § 93.202, paragraph (a) is amended by removing the citation ''(21 U.S.C. 134d)''.

§ 93.207 [Amended]

39. Section 93.207 is amended by removing the words ''in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)''.

§ 93.301 [Amended]

40. In § 93.301, paragraph (b)(1)(ii) is amended by removing the words ''as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)'' and by removing the words ''section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.302 [Amended]

41. In § 93.302, paragraph (a) is amended by removing the citation ''(21 U.S.C. 134d)''.

§ 93.306 [Amended]

42. Section 93.306 is amended by removing the paragraph designation ''(a)'' from the regulatory text of the section, and by removing the words ''in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)''.

§ 93.401 [Amended]

43. Section 93.401 is amended as follows:

a. In paragraph (a), by removing the words ''except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306),''.

b. In paragraph (b), in the introductory text, by removing the words ''by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)'' and by removing the number ''92'' that appears after the word ''part''.

c. In paragraph (b)(1)(ii), by removing the words ''as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)'', and by removing the words ''section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.402 [Amended]

44. In § 93.402, paragraph (a) is amended by removing the citation ''(21 U.S.C. 134d)''.

45. In § 93.404, paragraph (a)(2) is revised to read as follows:

§ 93.404 Import permits for ruminants and for ruminant test specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) An application for permit to import will be denied for domestic ruminants from any region designated in § 94.1 of this chapter as a region where rinderpest or foot-and-mouth disease exists.

* * * * *

§ 93.405 [Amended]

46. In § 93.405, paragraph (d) is amended by removing the words ''thereafter in accordance with the provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),''.

§ 93.408 [Amended]

47. Section 93.408 is amended by removing the words ''provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.419 [Amended]

48. In § 93.419, paragraph (b) is amended by removing the words ''thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),''.

§ 93.423 [Amended]

49. In § 93.423, paragraph (d) is amended by removing the words ''thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),''.

§ 93.426 [Amended]

50. In § 93.426, paragraph (a) is amended by removing the words ''thereafter in accordance with provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103)'' and by removing the comma after the word ''Administrator''.

§ 93.428 [Amended]

51. In § 93.428, paragraph (c) is amended by removing the words ''thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),''.

§ 93.501 [Amended]

52. Section 93.501 is amended as follows:

a. In paragraph (a), by removing the words ''except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306),''.

b. In paragraph (b), in the introductory text, by removing the words ''by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)''.

c. In paragraph (b)(1)(ii), by removing the words ''as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)'', and by removing the words ''section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 93.502 [Amended]

53. In § 93.502, paragraph (a) is amended by removing the citation ''(21 U.S.C. 134d)''.

54. In § 93.504, paragraph (a)(2) is revised to read as follows:

§ 93.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) An application for permit to import will be denied for domestic swine from any region designated in § 94.1 of this chapter as a region where rinderpest or foot-and-mouth disease exists.

* * * * *

§ 93.505 [Amended]

55. In § 93.505, paragraph (c) is amended by removing the words ''thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),''.

§ 93.507 [Amended]

56. Section 93.507 is amended by removing the paragraph designation ''(a)'' from the regulatory text of the section, and by removing the words ''in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)''.

57. In the center heading ''Central America and West Indies'' that

immediately precedes § 93.520, footnote 8 is amended by removing the words ''§§ 93.520 to 93.522 inclusive'' and adding the citation ''§ 93.520'' in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

58. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

59. In § 94.1, the introductory text of paragraph (a) is amended by removing the words ''section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

§ 94.1a [Amended]

60. In § 94.1a, the introductory text of paragraph (a) is amended by removing the words ''for the purposes of section 306(a) of the Act of June 17, 1930, as amended (19 U.S.C. 1306(a))''.

§ 94.4 [Amended]

61. In § 94.4, paragraph (b)(2) is amended by removing the citation ''(21 U.S.C. 610 *et seq.*)'' and adding the citation ''(21 U.S.C. 601 *et seq.*)'' in its place.

§ 94.5 [Amended]

62. In § 94.5, paragraph (e)(2) is amended by removing the words '', section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1930, as amended (19 U.S.C. 1306)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

63. Section 94.7 is revised to read as follows:

§ 94.7 Disposal of animals, meats, and other articles ineligible for importation.

(a) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by ocean vessel and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 48 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(b) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States aboard an airplane or railroad car and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 24 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(c) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by any means other than ocean vessel, airplane, or railroad car and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 8 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(d) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by any means but are not offered for entry into this country, and other animals, meats, and other articles prohibited importation under other sections of this part, which come into the United States by any means, whether they are offered for entry into this country or not, shall be immediately destroyed or otherwise disposed of as the Administrator may direct at any time.

§ 94.15 [Amended]

64. In § 94.15, paragraphs (b)(4) and (c)(4) are amended by removing the words ''section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111)'' and adding the words ''the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

65. The authority citation for part 95 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

66. The authority citation for part 96 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

68. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.32 [Amended]

69. In § 98.32, paragraph (a) is amended by removing the citation ''(21 U.S.C. 134d)''.

PART 99—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

70. The authority citation for part 99 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 99.1 [Amended]

71. In section 99.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: ''The Animal Health Protection Act, section 10414 (7 U.S.C. 8313)''.

PART 122—ORGANISMS AND VECTORS

72. The authority citation for part 122 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 151–158; 7 CFR 2.22, 2.80, and 371.4.

PART 123—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE VIRUS-SERUM-TOXIN ACT

73. The authority citation for part 123 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

PART 124—PATENT TERM RESTORATION

74. The authority citation for part 124 continues to read as follows:

Authority: 35 U.S.C. 156; 7 CFR 2.22, 2.80, and 371.4.

75. In § 124.2, the definition of *informal hearing* is revised to read as follows:

§ 124.2 Definitions.

* * * * *

Informal Hearing. A hearing that is not subject to the provisions of 5 U.S.C. 554, 556, and 557 and that is conducted as provided in 21 U.S.C. 321(x).

* * * * *

PART 130—USER FEES

76. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.51 [Amended]

77. In § 130.51, paragraph (d) is amended by removing the citation ''30 U.S.C. 3717'' and adding the citation ''31 U.S.C. 3717'' in its place.

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

78. The authority citation for part 145 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

79. The authority citation for part 147 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 160—DEFINITION OF TERMS

80. The authority citation for part 160 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

81. The authority citation for part 161 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

§ 161.4 [Amended]

82. In § 161.4, paragraph (d) is amended by removing the citation ''18 U.S.C. 1001, 21 U.S.C. 117, 122, 127, and 134e'' and adding the citation ''7 U.S.C. 8313, 18 U.S.C. 1001'' in its place.

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS'' ACCREDITATION

83. The authority citation for part 162 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

PART 166—SWINE HEALTH PROTECTION

84. The authority citation for part 166 is revised to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.8, and 371.4.

§ 166.14 [Amended]

85. In § 166.14, paragraph (a)(3) is amended by removing the citation ''(7 U.S.C. 135 *et seq.*)'' and adding the citation ''(7 U.S.C. 136 *et seq.*)'' in its place.

Done in Washington, DC, this 4th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3058 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–27–A]

Coordinated and Independent Expenditures; Correction

AGENCY: Federal Election Commission.

ACTION: Final rules; correction.

SUMMARY: The Federal Election Commission published final rules on January 3, 2003, regarding payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The final rules also addressed expenditures by political party committees that are made either in coordination with, or independently from, candidate. The final rules implemented several requirements of the Bipartisan Campaign Reform Act of 2002 (''BCRA''). Two amendatory instructions were incorrect. This document corrects the amendatory instructions. There is no substantive change to the final rules.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In rule FR Doc 03–90 published on January 3, 2003 (68 FR 421), make the following corrections. On page 457, first and second columns, correct the amendatory instructions 11 and 12, and correct the amendments to §§ 110.8 and 110.14, to read as follows:

11. In section 110.8, paragraph (a) is amended as follows:

(a) Paragraph (a)(1) is redesignated as paragraph (a)(1)(i);

(b) The introductory text is redesignated as paragraph (a)(1);

(c) Paragraph (a)(2) is redesignated as paragraph (a)(1)(ii);

(d) A new paragraph (a)(2) is added; and

(e) A new paragraph (a)(3) is added.

The revised text reads as follows:

Sec. 110.8 Presidential candidate expenditure limitations.

(a) * * *

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.17.

(3) Voting age population is defined at 11 CFR 110.18.

* * * * *

12. Section 110.14 is amended as follows:

(a) Paragraph (f)(2)(i) introductory text is revised;

(b) Paragraphs (f)(2)(ii) introductory text and (f)(2)(ii)(B) are revised;

(c) Paragraph (f)(3)(iii) is revised;

(d) Paragraph (i)(2)(i) introductory text is revised;

(e) Paragraph (i)(2)(ii) is revised;

(f) Paragraph (i)(3)(iii) is revised.

The revised text reads as follows:

Sec. 110.14 Contributions to and expenditures by delegates and delegate committees.

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication

expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

(i) * * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 100.16.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

Dated: February 4, 2003.

Rosemary C. Smith,

Acting Associate General Counsel, Federal Election Commission.

[FR Doc. 03–3127 Filed 2–6–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–326–AD; Amendment 39–13048; AD 2003–03–23]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires replacement of the horizontal stabilizer control units (HSCUs) with new upgraded HSCUs, and corrective actions if necessary. This action is necessary to prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 24, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov*. Comments sent via the Internet must contain ''Docket No. 2002–NM–326–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that, during EMBRAER production flight tests on a Model EMB–145 airplane, there were two occurrences of pitch trim system malfunction. Such malfunction resulted in reversed actuation of the horizontal stabilizer surface in response to nose down pitch trim command through the yoke switches. Investigation has revealed that the pitch trim system malfunction is due to failure of an internal component of the horizontal stabilizer control unit (HSCU). Reversal of the pilot's pitch trim command for the horizontal stabilizer could result in reduced controllability of the airplane.

Issuance of Brazilian Airworthiness Directives

The DAC issued emergency Brazilian airworthiness directive 2001–12–04, dated December 21, 2001, to address the identified unsafe condition on airplanes of Brazilian registry. As interim action to alleviate the identified unsafe condition, EMBRAER and Parker Hannifin (the manufacturer of the subject HSCUs) had developed a ''burn-in'' test designed to identify discrepant HSCUs. The ''burn-in'' test had already been accomplished on six airplanes of U.S. registry, and no discrepant HSCUs were found. Therefore, the FAA did not issue a corresponding AD.

Subsequently, the DAC issued two Brazilian airworthiness directives: 2001–12–04R1, dated March 11, 2002, and 2001–12–04R2, dated May 27, 2002, which require replacement of certain HSCUs with new upgraded HSCUs.

Explanation of Relevant Service Information

EMBRAER has issued the following service bulletins:

- Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; and

Change 02, dated November 27, 2002. These service bulletin changes describe procedures for replacing the horizontal stabilizer actuator (HSA) with a new HSA having a modified clutch with a higher breakout torque set point. Change 02 revises the service bulletin effectivity.

• Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; and Change 02, dated August 26, 2002. Among other things, these service bulletin changes describe procedures for replacing certain HSCUs with new upgraded HSCUs; and corrective actions, if necessary. For airplanes on which certain replacement HSCUs are used, corrective actions include replacement of the HSA with a new HSA that has a modified clutch with a higher breakout torque set point, and replacement of two pitch trim circuit breakers with new circuit breakers that are sized for the new system load capacity. Change 02 revises the service bulletin effectivity.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2001–12–04R2, described previously, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane. This AD requires replacement of certain HSCUs with new upgraded HSCUs, and corrective actions if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as described below.

Clarifications/Differences Between This AD and the Brazilian Airworthiness Directives

Brazilian airworthiness directive 2001–12–04R1, dated March 11, 2002, specified that corrective actions must be accomplished ''before June 15, 2002,'' which is equivalent to a compliance time of approximately 90 days. However, when Brazilian airworthiness directive 2001–12–04R2 was issued on May 27, 2002, the same compliance date of June 15, 2002, was retained; this resulted in a compliance time of approximately 20 days. In developing an appropriate compliance time for this AD, the FAA considered the compliance times specified in the Brazilian airworthiness directives. We find that 90 days is appropriate for accomplishment of the replacement required by this AD, and that it accurately reflects the intent of the Brazilian airworthiness directives.

In addition, Brazilian airworthiness directive 2001–12–04R2 specifies that replacement action may be accomplished per EMBRAER Service Bulletin 145–27–0092, Change 01, ''or further revisions'' that are approved by the DAC. The FAA cannot approve the use of a document that does not yet exist because to do so would violate Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, use of a later revision of the service bulletin could be approved as an alternative method of compliance per paragraph (d) of this AD. As described earlier, the FAA has approved the use of Change 02 of EMBRAER Service Bulletin 145–27–0092 for accomplishment of the actions required by this AD.

Differences Between This AD, the Brazilian Airworthiness Directive, and EMBRAER Service Bulletin 145–27–0092

The applicability of Brazilian airworthiness directive 2001–12–04R2 specifies that the replacement must be accomplished on all EMBRAER Model EMB–135 and –145 series airplanes equipped with certain HSCUs having serial numbers (S/Ns) higher than 4000, including those S/Ns identified with an ''A'' suffix that were installed per Brazilian emergency airworthiness directive 2001–12–04. However, the effectivity of Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 calls out certain airplanes by serial number, and does not specify HSCUs having an S/N with an ''A'' suffix. The applicability of this AD follows that of the Brazilian airworthiness directive with regard to including HSCUs with the ''A'' suffix designation; however, the applicability of this AD also specifies the airplane serial numbers called out in the service bulletin.

Additionally, Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 specify the use of HSCU part numbers 362100–1007 MOD.0 and 362100–1007 interchangeably. Those revisions of the service bulletin also specify the use of HSCU part numbers 362100–5009 MOD.0 and 362100–5009 interchangeably. However, paragraphs (a)(1) and (a)(3) of this AD correspond to the Brazilian airworthiness directive by using the term ''MOD.0.''

Difference Between This AD and EMBRAER Service Bulletin 145–27–0092

Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 specify replacement of certain HSCUs with the kits listed in the service bulletin, or with ''alternative or similar parts approved by EMBRAER.'' However, this AD requires replacement with a new upgraded HSCU, and does not allow the use of alternative or similar parts approved by EMBRAER.

Determination of Rule's Effective Date

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

Comments Invited

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

additional rulemaking action would be needed.

Submit comments using the following format:

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

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–326–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–03–23 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–13048. Docket 2002–NM–326–AD.

Applicability: Model EMB–135 and –145 series airplanes, having serial numbers as listed in EMBRAER Service Bulletin 145–27–0092, Change 02, dated August 26, 2002; and other Model EMB–135 and –145 series airplanes that have been equipped with a horizontal stabilizer control unit (HSCU) having part number (P/N) 362100–1007 MOD.1, P/N 362100–1009 MOD.0, or P/N 362100–5009 MOD.0; and having a serial number (S/N) above 4000, including S/Ns identified with an ''A'' suffix that were installed per emergency Brazilian airworthiness directive 2001–12–04, dated December 21, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

Part I: HSCU Replacement

(a) Within 90 days after the effective date of this AD, replace the HSCU with a new upgraded HSCU having the P/N identified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable; per Figure 1 and Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; or Change 02, dated August 26, 2002.

(1) Replace HSCU P/N 362100–1007 MOD.1 with a new upgraded HSCU having P/N 362100–1007 MOD.0 or MOD.2, P/N 362100–1009 MOD.1, or P/N 362100–5009 MOD.1.

(2) Replace HSCU P/N 362100–1009 MOD.0 with a new upgraded HSCU having P/N 362100–1009 MOD.1, or P/N 362100–5009 MOD.1.

(3) Replace HSCU P/N 362100–5009 MOD.0 with a new upgraded HSCU having P/N 362100–5009 MOD.1.

Part II: Corrective Actions

(b) For airplanes on which a new upgraded HSCU having P/N 362100–1009 MOD.1 or 362100–5009 MOD.1 has been installed per paragraph (a)(1) of this AD: Concurrently with the requirements of paragraph (a) of this AD, do paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the horizontal stabilizer actuator (HSA) with a new HSA per the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; or Change 02, dated November 27, 2002.

(2) Replace the pitch trim circuit breakers with new circuit breakers per the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; or Change 02, dated August 26, 2002.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; EMBRAER Service Bulletin 145–27–0091, Change 02, dated November 27, 2002; EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; and EMBRAER Service Bulletin 145–27–0092, Change 02, dated August 26, 2002; as applicable; which contain the specified list of effective pages:

Service bulletin reference and date	Page No.	Change level shown on page	Date shown on page
EMBRAER Service Bulletin 145–27–0091, June 17, 2002.	1–2 3–11	01 Original	June 17, 2002. Feb. 8, 2002.
EMBRAER Service Bulletin 145–27–0091, November 27, 2002.	1–2 3–11	02 Original	Nov. 27, 2002. Feb. 8, 2002.
EMBRAER Service Bulletin 145–27–0092, May 2, 2002.	1–2, 7–10, 35–36, 41–42 3–6, 11-34, 37–40	01 Original	May 2, 2002. Feb. 6, 2002.
EMBRAER Service Bulletin 145–27–0092, August 26, 2002.	1–2 7–10, 35–36, 41–42 3–6, 11–34, 37–40	02 01 Original	Aug. 26, 2002. May 2, 2002. Feb. 6, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–12–04R2, dated May 27, 2002.

Effective Date

(f) This amendment becomes effective on February 24, 2003.

Issued in Renton, Washington, on January 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2783 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9029]

RIN 1545–BA43

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, December 19, 2002 (67 FR 77678), relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code.

DATES: This correction is effective December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Tonya Christianson (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6050S of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9029), that were the subject of FR Doc. 02–31915, is corrected as follows:

§ 1.6050S–1 [Corrected]

On page 77684, column 1, § 1.6050S–1(b)(2)(vii), *Example 4.*, line 7 from the bottom of paragraph (i), the language ''expenses $6,000 for room and board for the'' is corrected to read ''expenses and $6,000 for room and board for the''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–3092 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9030]

RIN 1545–AX28

Exclusion of Gain From Sale or Exchange of a Principal Residence; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, December 24, 2002 (67 FR 78358), relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence.

DATES: This correction is effective December 24, 2002.

FOR FURTHER INFORMATION CONTACT: Sara Paige Shepherd, (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 121 of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9030), that were the subject of FR Doc. 02–32281, is corrected as follows:

§ 1.121–4 [Corrected]

1. On page 78366, column 3, § 1.121–4(e), the language ''(4) Example. The

provisions of this'' is corrected to read ''(3) Example. The provisions of this''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–3091 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 53 and 64

[WC Docket No. 02–112; FCC 02–336]

Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions and interprets section 272(f)(1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. It concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is not clear and unambiguous and finds that this section is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. This approach is most consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Senior Attorney Advisor, or Pamela Arluk, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1580, TTY number: (202) 418–0484. It is also available on the Commission's Web site at *http://www.fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02–112, FCC 02–336, adopted December 20, 2002, and released December 23, 2002. The full text may be purchased from the Commission's duplicating 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.*

Synopsis of the Memorandum Opinion and Order

1. In a rulemaking initiated in May of 2002, the Commission sought comment on whether the separate affiliate and related safeguards of section 272, that apply to Bell Operating Company (BOC) provision of in-region, interLATA telecommunications services, should sunset as provided in the statute or be extended by the Commission. It also sought comment on possible alternative safeguards for BOC provision of in-region, interLATA services after sunset of the 272 structural and related requirements. In this Order, the Commission addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions raised by parties to this proceeding. The Commission interprets section 272(f) (1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. The Commission concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is ambiguous and that this section is best interpreted as providing for a state-by-state sunset because this approach is consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

2. *Background.* The section 272(f)(1) sunset language that the Commission addresses in this Order is part of the Act's provisions for allowing the BOCs to enter the in-region, interLATA long distance telecommunications market once they have opened their local exchange markets to competition. Prior to entering the in-region, interLATA market in a particular state, a BOC must demonstrate compliance with the requirements of section 271 in that state, and obtain Commission authorization to provide such services. Among other things, Section 271 requires that a BOC applying for in-region, interLATA entry demonstrate that it will provide the authorized interLATA service in compliance with the requirements of section 272. Section 272(a), among other things, provides that a BOC may not provide originating in-region, interLATA telecommunications services, subject to certain limited exceptions, unless it provides that service through one or more affiliates that are separate from the incumbent BOC. The separate affiliate and other related requirements of section 272 sunset as provided in section 272(f)(1).

3. In this Order, the Commission applies to section 272(f)(1) a two step process for statutory analysis. First, it finds that the meaning of section 272(f)(1) is not clear and unambiguous. Then, after a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. The Commission therefore rejects the contentions advanced by Verizon, BellSouth and USTA that section 272(f)(1) unambiguously provides for a region-wide sunset of the separate affiliate and related requirements three years after the first BOC or an affiliate, including another affiliated BOC within the region, receives its first section 271 authorization. For the same reasons, the Commission cannot accept SBC's narrower argument that this language unambiguously requires a BOC-by-BOC sunset three years after an individual BOC or its affiliated interexchange carrier receives its first section 271 authorization.

4. Section 272(f)(1) cannot properly be viewed as unambiguous so as to foreclose the interpretation the Commission adopts in this Order. Both of the readings of section 272(f)(1) advocated by the BOCs and USTA produce anomalous results when considered in conjunction with the requirements of section 271, which specifically references section 272. The anomalous results produced by both the region-wide and BOC-by-BOC interpretations of the sunset provisions in section 272(f)(1) flow from the interaction of the sunset provisions and the requirements of section 271. Both of the purported ''plain language'' readings of section 272(f)(1) would effectively read the requirement for a showing of compliance with the requirements of section 272 out of section 271 to a large extent. Under the region-wide sunset approach, this section 271 requirement would effectively be eliminated three years after a BOC received section 271 authority for the first state in the region, regardless of whether it had obtained section 271 authority in all of its other in-region states. The BOC-by-BOC approach could potentially have produced similarly anomalous results. In addition, the BOC-by-BOC and region-wide interpretations of the section 272 sunset appear to produce arbitrary results when applied in conjunction with the definition of a BOC contained in the Act. In particular, under this reading, the scope of the sunset turns on matters of corporate structure, which are subject to control by the BOCs. In contrast, the language

of section 272(f)(1) can also be read as requiring a state-by-state sunset, thus avoiding anomalous results under section 271.

5. After a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. A state-by-state sunset parallels the state-by-state authorization process provided for in section 271 and is consistent with the definition of a BOC contained in the Act. A state-by-state sunset also avoids the anomalous results under section 271(d)(3)(B) and the statutory definition of a BOC that are produced by application of a BOC-by-BOC or region-wide sunset.

Final Regulatory Flexibility Analysis

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. In the NPRM in this proceeding (67 FR 42211, June 21, 2002), the Commission certified that none of the proposals, if adopted, would have a significant economic impact on a substantial number of small entities because the issues under consideration in this proceeding directly affect only the BOCs and their affiliates, which do not qualify as small entities under the Regulatory Flexibility Act (RFA). The NPRM stated that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC) and all of the BOCs or their RHCs have more than 1,500 employees under the applicable SBA size standard. The NPRM also stated that insofar as this proceeding applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC and thus are not ''independently owned and operated'' entities for purposes of the RFA. Furthermore, comment was requested on this initial certification, and no party addressed this issue. Therefore we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

9. This Memorandum Opinion and Order does not contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will not be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.

Ordering Clauses

10. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201–205, 218–220, 251, 271, 272, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 (i)–(j), 201–205, 218–220, 251, 271, 272, 303(r) and 403, this Order IS ADOPTED.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3068 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90–571; FCC 02–269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the requirement that common carriers provide coin sent-paid telecommunications relay service (TRS) from payphones on the grounds that it is currently technologically infeasible to provide coin sent-paid relay service through payphones. This document requires common carriers to provide local payphone calls made through TRS centers to TRS users on a cost-free basis. This document requires TRS providers to accept credit and calling cards and third party collect billing for toll calls from payphones. This document, also, encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones.

DATES: Effective March 10, 2003 except § 64.604(c)(3) of the Commission's rules which contain information collection(s) requirements shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov*. For additional information concerning the information collections contained in this *Fifth Report and Order,* contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* on coin sent-paid TRS, adopted September 17, 2002, and released October 25, 2002. Copies of any subsequently filed documents in this matter will be 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 complete text of this decision also may be purchased from the Commission's duplicating 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*. Copies of this document in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau at (202) 418–7426 (voice), (202) 418–7365 (TTY), or e-mail *bmillin@fcc.gov*. This *Fifth Report and Order* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

In this *Fifth Report and Order,* the Commission eliminates the requirement that common carriers provide coin sent-paid toll TRS calls from payphones. The Americans with Disabilities Act (ADA) requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from ''failing to fulfill the obligations of common carriers by refusing calls'' 47 U.S.C. 225(d)(1)(E). In the *First Report and Order* on TRS, 56 FR 36729, August 1, 1991, the Commission interpreted this mandate to require TRS providers to handle ''any type of call normally provided by common carriers,'' and placed the burden of proving the infeasibility of handling a particular type of call on the carriers, 6 FCC Rcd 4657 (1991). The Commission interpreted ''any type of call'' to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone, 6 FCC Rcd at 4661 n.18. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the current suspension remains in effect until publication of the final rules adopted in this *Fifth Report and Order.* Because no current technological solution to the coin sent-paid toll TRS issue appears feasible, this *Fifth Report and Order* eliminates the coin-sent paid toll TRS requirement affirms that credit and calling cards may be used to bill toll TRS calls made from a payphone, and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. As proposed in the *Coin Sent-Paid Further Notice,* this *Fifth Report and Order* mandates that local payphone calls made to and through TRS centers be provided by common carriers on a cost-free basis. This *Fifth Report and Order* also encourages specific outreach and education programs to inform TRS users of their options when placing TRS calls from payphones. Finally, the *Fifth Report and Order* mandates carriers via the Industry Team to submit a report on these outreach and education efforts to the Commission twelve months after publication of this *Fifth Report and Order* in the **Federal Register**. The report will facilitate the Commission's efforts to ensure that TRS consumers have the information they need to complete local as well as toll TRS calls from payphones.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. Seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. 104–121, Title II, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking.* Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking,* 16 FCC Rcd 5803 (2001), 66 FR 18059, April 5, 2001, including comment on the IRFA. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking,* including comment on the IRFA. The comments received discussed only the general recommendations, not the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

1. Need for, and Objective of This Fifth Report and Order

This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services using payphones that are functionally equivalent to those available to persons without hearing or speech disabilities. Our specific concern was to address the inability to make coin sent-paid local and toll TRS calls from payphones. Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Second Further Notice of Proposed Rulemaking* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users. This *Fifth Report and Order* addresses the means by which persons with hearing and speech disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coin sent-paid toll TRS calls.

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

No comments were filed in response to the IRFA in this proceeding. No comments on the NPRM were received concerning the small business issues. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and as discussed in Section 5, *Infra*, has concluded that the rules adopted impose no significant economic burden on small businesses.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(2)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business.'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriated to the activities of the agency and published such definition(s) in the **Federal Register**.'' A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information available at this time regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, is data the Commission publishes annually in its *Telecommunications Provider Locator Report*, regarding FCC Form 499–A.

FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1–2 (November 2001) (*Provider Locator*).

TRS Providers. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC's most recent data, there are approximately 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. *See* National Association for State Relay Administration (NASRA) Statistics. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. North American Industry Classification System (NAICS) code 513310. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI, for example, provides relay service in approximately only 3 states, but is not a small business. Consequently, the FCC estimates that there are fewer than 5 small TRS providers that may be affected by the proposed rules, if adopted.

Payphone Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Provider Locator Report.* According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Provider Locator at Table 1. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 936 small entity pay telephone operators that may be affected by this *Fifth Report and Order.*

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. *1992 Census.* According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs. NAICS code 513310.

We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concerns,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determination in other, non-RFA contexts. NAICS code 513310.

4. Description of Project Reporting, Recordkeeping and Other Compliance Requirements

The rules require carriers to submit a one-time report, twelve months after publication of this *Fifth Report and Order* in the **Federal Register**, detailing the steps they have taken to comply with the consumer requirements contained herein. Any additional costs incurred as a result of this proceeding should be nominal because the entities affected, including any small businesses, have been in compliance with the *Alternative Plan Order*, and because the reporting requirements is a one-time requirement.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1) through (c)(4).

For the following reasons, no steps need to be taken to minimize the economic impact on small businesses or to consider alternatives to minimize the economic impact on small businesses. First, the requirements in this *Fifth Report and Order* will have minimal impact on small entities because they require actions already being undertaken under the *Alternative Plan.* In this sense, the requirements merely formalize such actions. These actions are as follows: (1) Providing free local calling to a TRS provider from payphones; and (2) submitting a one-time report, to the Commission, 12 months after final rules are adopted in this proceeding regarding the steps that

have been taken to comply with the consumer education recommendations contained in the Report and Order.

Second, although this *Fifth Report and Order* recommends an extensive consumer outreach program, the program is only recommended, not required. Therefore, we conclude that the action taken herein should not adversely affect any small entities. Furthermore, this action aids all affected entities, including small businesses, as states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

6. Report to Congress

The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Fifth Report and Order* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Act of 1995 Analysis

This *Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA) Pub. L. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified information collections(s) contained in this proceeding.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 225 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 225 and 303, this Report and Order is adopted, and part 64 of the Commission's rules is amended and shall be effective March 10, 2003.

It is further ordered that the information collection(s) contained in the Report and Order shall become effective following approval by the Office of Management and Budget in the **Federal Register** announcing the effective date for those sections.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is amended to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.604 is amended by revising paragraph (a)(3) to read as follows:

§ 64.604 Mandatory Minimum Standards.

* * * * *

(a) * * *

(3) *Types of Calls*—Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Relay service providers are permitted to decline to complete a call because credit authorization is denied.

* * * * *

[FR Doc. 03–3069 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 923, 936 and 970

RIN 1991–AB47

Acquisition Regulation: Affirmative Procurement Program—Acquisition of Products Containing Recovered Materials

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to further implement Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* dated September 14, 1998. On June 6, 2000, the Federal Acquisition Regulation (FAR) was amended to implement the Executive Order by a final rule published in the **Federal Register**. Today's amendment to the DEAR is necessary to supplement the FAR regarding agency policy applicable to DOE's facility management contractors.

EFFECTIVE DATE: March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Langston, U.S. Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue, SW., Washington, DC 20585 at (202) 586–8247, or via e-mail at *richard.langston@pr.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
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J. Review Under Executive Order 13211
K. Approval by the Office of the Secretary of Energy

I. Background

This action follows a Notice of Proposed Rulemaking published in the **Federal Register** on November 30, 2000 (65 FR 71292). The public comment period for the notice ended January 2, 2001. The purpose of this rule is to provide additional guidance regarding Executive Order 13101, dated September 14, 1998 (63 FR 49641), entitled *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, which superceded Executive Order 12873 dated October 20, 1993, entitled *Federal Acquisition, Recycling, and Waste Prevention.* Among the changes made by this rule is the revision of the clause at section 970.5223–2 of the DEAR to

include subcontract flow down of Affirmative Procurement Program requirements in certain limited circumstances.

Subsequent to the publication of the Notice of Proposed Rulemaking, a separate final rule was published December 22, 2000, 65 FR 80994, amending the DEAR. That final rule amended the numbering structure of Part 970, Management and Operating Contracts. As a result of that final rule, the clause at 970.5204–39 in the proposed rule was redesignated 970.5223–2.

II. Discussion of Public Comments

Five organizations submitted comments in 9 areas as discussed below.

1. 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. The Department had proposed that the percentage of recovered/recycled content, recommended by the Environmental Protection Agency (EPA) in their Recovered Materials Advisory Notices (RMANs) be specified in the solicitation as the minimum percentage of recycled content.

Comment: One reviewer suggested that this created a problem as the EPA RMANs often do not specify a specific content but rather a range of content as the content sometimes varies by geographical area.

Response: The Department agrees with this comment and has added the phrase ''or range of content'' at 923.405(e).

2. 923.705, Contract clause, specifies the use of the clause at FAR 52.223–10.

Comment: A reviewer did not believe the meaning of the phrase ''prime support service awards being performed at Government-owned or Government-leased facilities'' was clear. The same reviewer suggested the word ''awards'' was unnecessary in the same phrase.

Response: The Department has chosen not to finalize proposed section 923.705 because it would be unnecessarily duplicative of existing FAR coverage at 23.705.

3. 936.601–3, Applicable contract procedures. The Department had proposed to add a new Section 936.601 addressing topics that requirements personnel should consider when designing and constructing or modifying facilities. No comments were received but the Department has chosen to delete the addition of a section 936.601–3 from this rule as it is unnecessarily duplicative of existing FAR coverage at 36.601–3.

4. 970.5223–2, Affirmative Procurement Program. The rule would extend the Affirmative Procurement Program to certain subcontracts.

Comment: A reviewer suggested that flow down would be contrary to other DOE efforts to implement more economical and efficient commercial procurement practices. The reviewer suggested this would entail substantial cost to implement on the part of subcontractors who would have to develop additional compliance procedures, including an inspection program.

Response: The Department disagrees. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, as amended, and EPA regulations, found at 40 CFR part 247, require Federal agencies to acquire products with recovered/recycled content which have been designated by EPA in the Comprehensive Procurement Guidelines. Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* Section 701, requires contracts for contractor operation of a Government-owned or Government-leased facility to include provisions that obligate the contractor to comply with the requirements of the Executive Order. The result of the statute, EPA regulations, and the Executive Order are that this portion of the operation of a Federal facility cannot be operated as though it were a commercial facility. Disregarding these requirements when a subcontractor operates a portion of a Government facility would be contrary to the intent of the requirements. The purpose of this rulemaking is not to flow down the Affirmative Procurement Program to all subcontracts. The purpose of the rulemaking is to capture those instances in which a facility management contractor subcontracts for a significant portion of the operation of the Government facility which involves acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their contractors are to acquire with recovered/recycled content. The flow down applies only to such subcontracts not to all subcontracts. The reviewer is concerned that our flow down in this limited area will include extensive certifications or inspections. The Department has chosen not to flow down this level of detailed guidance. The contractor and subcontractor may agree on what degree of detail is appropriate to the circumstance. No inspection programs are contemplated or mandated by this rulemaking.

5. 970.5223–2, Affirmative Procurement Program. The Department had proposed changing the clause title from ''Acquisition and Use of Environmentally Preferable Products and Services'' to ''Affirmative Procurement Program.''

Comment: A reviewer asked the origin of the title of the clause. The same reviewer suggested we add ''for EPA Designated Products.'' Another reviewer suggested ''environmentally preferable'' should be retained in the title as the program guidance materials address this topic.

Response: The title ''Affirmative Procurement Program'' is the title used by the Resource Conservation and Recovery Act, 42 U.S.C. 6962, to describe a preference program for Federal acquisition of products with recovered/recycled content. The DOE Affirmative Procurement Program Guidance materials do include consideration of environmentally preferable aspects of procurement; however, the primary focus of the program is products with recycled content. Environmentally preferable procurement is generally viewed as a separate program area which seeks to acquire products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Accordingly, the Department is not accepting the suggestion that we retain''environmentally preferable'' in the title. The suggestion that we add ''for EPA designated products'' is not adopted as the Department prefers the shorter title.

6. 970.5223, Affirmative Procurement Program. Paragraph (a) advises the reader that the Department's Affirmative Procurement Program Guidance is available on the Internet.

Comment: Two reviewers questioned the meaning of this. They were concerned that posting the guidance on the Internet would allow the Government to revise the Guidance without notice.

Response: The guidance provided at the DOE Executive Order 13101 home page is extensive and includes Federal, EPA and DOE regulatory materials, Executive Orders, strategic plans, and related information. The specific portion considered to be the DOE Affirmative Procurement Program Guidance, for purposes of compliance with the clause at 970.5223–2, is entitled *DOE's Affirmative Procurement Program Guidance.* It was developed after extensive coordination within the Department. It is the same guidance referred to in current contracts and it is posted on the Internet only for the convenience of all. Any changes will be coordinated within the Department.

Posting the Guidance on the Internet is only for the convenience of all parties and will have no effect on the formal means through which revisions may be made.

7. 970.5223–2, Affirmative Procurement Program. Paragraph (c) addresses submission of contract reports.

Comment: A reviewer suggested that the requirement for the submission of subcontract reports at the ''conclusion of each fiscal year'' would be problematic for supply item subcontracts in particular since a set delivery date generally would not cross fiscal years. The reviewer suggested that it be revised to read ''at the end of the Federal fiscal year and the end of the contract.''

Response: The intent of this suggestion has been adopted but the text has been included at paragraph (d) for clarity since paragraph (d) addresses subcontract matters. The added text allows submission of the report upon completion of the subcontract unless the subcontract term is multiple year, in which case it provides that the parties will agree to an annual report submission schedule.

8. 970.5223–2, Affirmative Procurement Program. Paragraph (d) addresses applicability to subcontracts.

Comment: A reviewer suggested that the facility management contractor be allowed to flow down a clause substantially the same as that at 970.5223–2. The reviewer suggested it might be easier to accomplish the intent of the instruction if it is possible to tailor the clause to the circumstances of the subcontract situation. The reviewer also suggested that there was no reason to flow down the clause if the parties can determine the amount of products with recycled content that will be acquired under the subcontract at the time of the subcontract award.

Response: The Department agrees. The instructions, at 970.2304–2, and in paragraph (d) of the clause, have been revised to allow use of a clause substantially the same as the 970.5223–2 clause. Additionally, the instructions, at 970.2304–2, and in paragraph (d) of the clause, have been revised to provide that in situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content that will be acquired under the subcontract, the facility management contractor may include such quantities in its own report and only flow down a requirement that the subcontractor will procure such products with recovered/recycled content. When it is not possible to determine the amount to be acquired under the subcontract, such as an ''as required'' supply or service subcontract, the clause should be included in the subcontract.

9. 970.5223–2, Affirmative Procurement Program. Paragraph (e) concerns terminology to be used when the clause is used in a subcontract.

Comment: A reviewer questioned whether all facility management contractors have a recycling coordinator.

Response: Yes, all DOE facility management contractors have a recycling coordinator.

III. Section-by-Section Analysis

The Department of Energy amends the regulation as follows:

1. The authority citation for Parts 923 and 936 is revised.

2. A new section 923.405, Procedures, is being added to note that the recommended percentage of recycled content or range of recycled content included in the EPA Recovered Materials Advisory Notices (RMANs) is to be specified in the solicitation and contract as the minimum recycled content or range of content.

3. Section 923.471, Policy, is being deleted as unnecessarily duplicative of FAR coverage at 23.403.

4. Section 936.602–70 is modified by the addition of a new paragraph (a)(8) regarding consideration of the Architect-Engineer firm's experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered and environmentally preferable materials when performing Architect-Engineer evaluations.

5. Section 970.2304 is being updated to include reference to 48 CFR (FAR) 23.4 and 23.704 and is revised to provide guidance concerning circumstances under which the clause at 970.5223–2 should be included in subcontracts. The list of circumstances under which recycled content products need not be purchased is revised to conform to the wording of the Federal Acquisition Regulation.

6. The clause at 970.5223–2 is being updated and revised to include guidance concerning circumstances under which the clause should be included in certain subcontracts. The list of circumstances under which recycled content products need not be purchased is revised to conform to the wording of the Federal Acquisition Regulation.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any role that is likely to have significant economic impact on a substantial number of small entities. This rule, which would implement provisions of Executive Order 13101 concerning the use of recycled materials, would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain

circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910–0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each agency to assess the effects of Federal regulatory action on State, local and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private Sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 923, 936 and 970

Government procurement.

Issued in Washington, DC, on January 28, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set out in the preamble, DOE amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

1. The authority citations for Parts 923 and 936 are revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 923.405 is added to read as follows:

923.405 Procedures [DOE supplemental coverage—paragraph (e)].

(e) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, the EPA recommended percentage of recovered/recycled content or range of content contained in the Recovered Materials Advisory Notice (RMAN) shall be specified in the solicitation and contract as the minimum percentage of recovered/recycled content or range of content. Acquisition of a product with recycled content exceeding the RMAN recommended content or range of content is encouraged if the product performs acceptably.

923.471 [Removed and Reserved].

3. Section 923.471 is removed and reserved.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 936.602–70 is amended by adding paragraph (a)(8) to read as follows:

936.602–70 DOE selection criteria.

* * * * *

(a) * * *

(8) In addition to these requirements, consider the Architect-Engineer firm's experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered and environmentally preferable materials and other criteria at FAR 36.602–1.

* * * * *

PART 970—MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

6. The subpart title for subpart 970.23 is revised to read as follows:

Subpart 970.23—Environment, Conservation, Occupational Safety, and Drug Free Work Place

7. Sections 970.2304–1 and 970.2304–2 are revised to read as follows:

970.2304–1 General.

The policy for the acquisition and use of EPA designated items, *i.e.*, items with recovered/recycled content, is set forth at 48 CFR (FAR) 23.4—Use of Recovered Materials as supplemented by 48 CFR (DEAR) 923.405(e) and by 48 CFR (FAR) 23.704, Application to Government-owned or leased facilities, and 48 CFR (FAR) 23.705, Contract clause.

970.2304–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (FAR) 52.223–10, Waste Reduction Program, and the clause at 48 CFR (DEAR) 970.5223–2, Affirmative Procurement Program, in contracts for the management of DOE facilities, including national laboratories. If the contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as that at 48 CFR (DEAR) 970.5223–2. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their contractors are to procure with recycled content pursuant to 40 CFR part 247. Examples of such subcontracts would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of the 970.5223–2 clause. Instead, the facility management contractor may include the subcontract quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available:

(a) Competitively within a reasonable time;

(b) At a reasonable price; or,

(c) Within the performance requirements.

Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

8. Section 970.5223–2 is revised to read as follows:

970.5223–2 Affirmative procurement program.

As prescribed in 48 CFR (DEAR) 970.2304–2, insert the following clause in contracts for the management and operation of DOE facilities, including national laboratories.

Affirmative Procurement Program—March 2003

(a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.

(b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.

(d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available:

(i) Competitively within a reasonable time;

(ii) At a reasonable price; or,

(iii) Within the performance requirements.

If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word ''Contractor'' will be understood to mean ''subcontractor'' and the term ''DOE Recycling Coordinator'' will be understood to mean ''Contractor Recycling Coordinator.''

[FR Doc. 03–2911 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4662]

RIN 2127–AJ02

Federal Motor Vehicle Safety Standards, School Bus Body Joint Strength; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: In the **Federal Register** of December 13, 2001, NHTSA published a document in response to petitions for reconsideration that amended Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength.* There was a typographical error in S6.1.2. This document corrects the error.

DATES: Effective on January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX

number is: (202) 366–3820. Her address is: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published a document in the **Federal Register** of December 13, 2001, (66 FR 64358) (FR Doc. 01–34096) amending Federal Motor Vehicle Safety Standard No. 221, *School bus body joint strength,* 49 CFR 571.221. As published, 6.1.2 of the standard stated: ''If a joint is less than 305 mm long, cut a test specimen with enough of the adjacent material to permit it to be held in the tension testing machine specified in S6.3.'' This document corrects ''305 mm'' to read ''203 mm.''

Need for correction—As published, the final rule contains an error which may prove to be misleading and needs to be clarified.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Accordingly, 49 CFR Part 571 is corrected by making the following correcting amendment:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.221 is corrected by revising S6.1.2 to read as follows:

§ 571.221 Standard No. 221, School Bus Body Joint Strength

* * * * *

S6.1.2 If a joint is less than 203 mm long, cut a test specimen with enough of the adjacent material to permit it to be held in the tension testing machine specified in S6.3.

* * * * *

Issued on: January 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2702 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 020303C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, February 4, 2003, through 6 a.m., January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone:727–570–5305, fax:727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone was reached on February 3, 2003. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, February 4, 2003, through 6 a.m., January 20, 2004, the beginning of the next fishing season, i.e., the day after the 2004 Martin Luther King Jr. Federal holiday.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone that, from November 1 through March 31, extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat.(a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the

fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated:February 3, 2003.

Richard W. Surdi,

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

[FR Doc. 03–2990 Filed 2–3–03; 4:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 26
Friday, February 7, 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

7 CFR Part 319

[Docket No. 02–058–1]

RIN 0579–AB49

Flag Smut Import Prohibitions on Wheat and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on whether and how we should amend the regulations regarding the importation of wheat and related items. Under these regulations, importation of wheat and related items from a number of countries and localities is currently prohibited to prevent the introduction of foreign strains of flag smut into the United States. We are considering easing restrictions on the importation of wheat and related articles from these countries and localities based on a recent risk assessment. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our regulations.

DATES: We will consider all comments that we receive on or before April 8, 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. 02–058–1, 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. 02–058–1. 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. 02–058–1'' on the subject line.

You may read any comments that we receive on this docket 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.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Wheat Diseases'' (7 CFR 319.59 through 319.59–2, referred to below as the regulations) prohibit the importation of wheat and related items into the United States from certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt. This advance notice of proposed rulemaking concerns only the prohibitions on flag smut. Flag smut is a plant disease caused by a highly infective fungus, *Urocystis agropyri*, which attacks wheat and substantially reduces its yield.

Flag smut was first described in 1868 in Australian wheat fields. Affected plants within the growing crop are often severely stunted and produce excessive numbers of tillers. Unlike other bunts and smuts of wheat, flag smut does not affect the quality of harvested grain for feed or flour. Flag smut of wheat was first discovered in the United States in 1919, and a quarantine on wheat from countries having flag smut was put in effect. Until the 1930's, flag smut was a significant disease of wheat in the United States, but has recently been found only on wheat in the Pacific Northwest when seed is sown in late August and early September at depths of more than 2 inches.

To address the risk presented by foreign strains of flag smut, the regulations prohibit the importation, except by the United States Department of Agriculture under a departmental permit, of certain articles from specified countries and localities. Specifically, the regulations prohibit the importation of the following articles of *Triticum* spp. (wheat) or *Aegilops* spp. (barb goatgrass, goatgrass):

- Seeds;
- Plants;
- Straw (other than straw, with or without heads, that has been processed or manufactured for use indoors, such as for decorative purposes or for use as toys);
- Chaff; and
- Products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour.

The regulations also prohibit the importation of seeds of *Melilotus indica* (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

The countries and localities from which the importation of those articles is prohibited are listed in § 319.59–2(a)(2) of the regulations. The listed countries and localities are: Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

We recently evaluated the need for continuing the prohibitions to protect against foreign strains of flag smut. We are considering removing these prohibitions because a risk assessment we have prepared regarding flag smut indicates: (1) Flag smut exists in the United States in only two counties in the Pacific Northwest; (2) there is no evidence that foreign strains of flag smut differ genetically from strains present in the United States or that they pose more risk than domestic strains to wheat production in the United States; (3) we do not currently regulate the interstate

movement of domestic commodities from areas in the United States where flag smut exists; (4) because of temperature and moisture needs of the pathogen, flag smut occurs in the United States only in the Pacific Northwest and only when seed is sown under certain conditions; and (5) effective production strategies exist that minimize the effects of this disease on wheat. The pest risk assessment is available on the Internet at *http://www.aphis.usda.gov/ppq/pra,* or a copy may be requested by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Under these circumstances, it does not appear that U.S. wheat would be at risk from foreign strains of flag smut if we remove the current prohibitions. Also, we believe that we are obligated to remove the prohibitions under the World Trade Organization Agreement on Sanitary and Phytosanitary Measures and the International Plant Protection Convention. These agreements require our import regulations concerning a specified plant or plant pest to be no more stringent than our domestic regulations concerning the same plant or plant pest. These agreements also require us to impose the least restrictive requirements consistent with our appropriate level of protection.

However, simply removing the prohibitions related to flag smut could present a plant pest risk. The flag smut regulations have for many years prohibited the importation of wheat and related products from the countries and localities listed in § 319.59–2(a)(2). As the prohibitions were put into place prior to our adoption of the pest risk analysis process, no risk assessment has been prepared to determine whether other plant pests associated with wheat and other products covered by the flag smut regulations are present in those countries and localities.

We are weighing whether to continue prohibitions on wheat and related products from these countries, even if we remove the prohibitions related to flag smut, until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests. Also, we are weighing whether a similar risk assessment should be done relative to imports of wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States. Although pest interception data has not indicated a problem with those imports, no risk assessment has been done to evaluate the risk of those products introducing other plant pests. Major exporters of wheat to the United States include Canada and Mexico.

We invite comments on these issues. In particular, we are soliciting comments that address the following questions:

1. Should we remove the current prohibitions related to foreign strains of flag smut?

2. If we remove the prohibitions related to flag smut, are any lesser restrictions or safeguards necessary? If so, why, and what restrictions or safeguards would be appropriate?

3. If we remove the prohibitions related to flag smut, should we continue to prohibit the importation of wheat and related products from countries and localities currently covered by the flag smut regulations until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests?

4. If we require a risk assessment before allowing wheat and related products to be imported from countries now covered by the flag smut regulations, should we also require a risk assessment for wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States?

5. What would be the effects of any of these options on:

a. U.S. wheat producers;

b. U.S. consumers of wheat products; and

c. Other interested parties in the United States, such as grain storage facilities, grain haulers, feed and flour millers, and seed companies?

We welcome comments on these questions and encourage the submission of new options or suggestions.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–3057 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 6, 7, 9, 28, and 34

[Docket No. 03–02]

RIN 1557–AB97

Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend several of its regulations to update and clarify them in various respects. Proposed revisions to parts 5 and 7 would implement new authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In order to clarify issues that have arisen in connection with the scope of the OCC's visitorial powers, the proposal would revise part 7. The proposal contains other amendments to parts 5, 7, 9, and 34 as well as several technical corrections.

DATES: Comments must be received by April 8, 2003.

ADDRESSES: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–02; fax number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov*. Due to delays in the delivery of paper mail in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: For questions concerning proposed 5.20,

contact Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 5.32, contact Robert Norris, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; or Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 5.33, contact Crystal Maddox, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.2024, contact Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.4000, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 34.3, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 9.18, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice of proposed rulemaking invites comment on changes to our regulations that fall into the following categories:

- Changes to our rules that implement the AHEOA (discussed in Section II of the **SUPPLEMENTARY INFORMATION**);
- Clarifications to our visitorial powers regulations (Section III);
- Amendments to part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; to part 7 concerning national banks' ability to provide tax advice; to part 9 concerning the valuation of collective investment funds; and to part 34 to update regulatory text to conform to a statutory change (Section IV); and
- Various technical changes to correct citations or footnote numbering (Section V).

II. Amendments Implementing the AHEOA

A. Background

The National Bank Consolidation and Merger Act (12 U.S.C. 215 *et seq.*) (Merger Act) permits consolidations and mergers involving national banks. Pursuant to 12 U.S.C. 215 and 215a, national banks or state banks [1] may, with OCC approval, merge or consolidate with a national bank located in the same state, resulting in a national bank. National banks also may merge or consolidate with Federal thrifts under 12 U.S.C. 215c, resulting in either a national bank or Federal thrift. Pursuant to 12 U.S.C. 215a–1, an insured national bank may merge or consolidate with an insured bank located in a different state.

Prior to the enactment of the AHEOA on December 27, 2000,[2] the Merger Act did not address mergers or consolidations involving a national bank and its nonbank affiliates. However, section 1206 [3] of the AHEOA amended the Merger Act to permit national banks to merge with one or more of their nonbank affiliates with the approval of the OCC (Section 1206 Merger).

Other provisions of the AHEOA liberalize statutory reorganization and corporate governance requirements for national banks. Section 1204 [4] amends the Merger Act to expedite the procedures that a national bank may use when it reorganizes to become a subsidiary of a holding company. Section 1205 [5] of the AHEOA liberalizes the requirements governing the number and length of service of national bank directors.

This rulemaking contains proposed amendments to parts 5 and 7 to implement these changes made by the AHEOA.

B. Description of the Proposal

1. Reorganization Into a Holding Company Subsidiary—Proposed § 5.32 (New)

Pursuant to section 1204, a national bank, with the OCC's approval and the affirmative vote of shareholders holding at least two-thirds of the bank's outstanding capital stock, may reorganize to become a subsidiary of a bank holding company or a company that will become a bank holding company through the reorganization.

The proposal implements this provision in proposed new § 5.32. Paragraph (a) states the authority for engaging in section 1204 transactions. Paragraph (b) repeats the scope of the statute and provides that § 5.32 applies to a reorganization of a national bank into a subsidiary of a bank holding company or of a company that will become a bank holding company through the reorganization.

Pursuant to proposed § 5.32(c), a national bank must submit an application to, and obtain approval from, the OCC prior to participating in a reorganization under paragraph (b).

In accordance with proposed § 5.32(d)(1), the application will be deemed approved by the OCC as of the 30th day after the OCC receives it, unless the OCC otherwise notifies the applicant national bank. Approval of applications under § 5.32 is subject to the condition that the bank give the OCC 60 days' prior notice of any material change in its business plan or any material change from the proposed changes described in the bank's plan of reorganization. Paragraph (d)(2) of proposed § 5.32 implements the statutory requirements that apply to the content of the reorganization plan. The plan must: (1) Specify how the reorganization is to be carried out; (2) be approved by a majority of the national bank's board of directors; (3) specify the amount and type of consideration that the bank holding company will provide for the stock of the bank, the date on which the shareholders' rights to participate in the exchange are to be determined, and the procedure for carrying out the exchange; (4) be submitted to the shareholders of the reorganizing bank at a meeting called in accordance with the procedures outlined in section 3 of the Merger Act; [6] and (5) where applicable, describe any changes to the bank's business plan resulting from the reorganization. Consistent with section 3 of the Merger Act, the proposal also requires that at least two-thirds of the bank's shareholders approve a reorganization. Paragraph (d)(3) of proposed § 5.32

[1] The term ''state bank'' is defined to include state-chartered banks, banking associations, trust companies, savings banks (other than mutual savings banks), and other banking institutions engaged in the business of receiving deposits. 12 U.S.C. 215b. This section also contains other definitions.

[2] Pub. L. 106–569, 114 Stat. 2944.

[3] Pub. L. 106–569, sec. 1206, 114 Stat. 2944, 3034 (codified at 12 U.S.C. 215a–3).

[4] Pub. L. 106–569, sec. 1204, 114 Stat. 2944, 3033 (codified at 12 U.S.C. 215a-2).

[5] Pub. L. 106–569, sec. 1205, 114 Stat. 2944, 3033–3034 (amending 12 U.S.C. 71 and 71a).

[6] Section 3 of the Merger Act, 12 U.S.C. 215a(a)(2), provides generally that a shareholders' meeting will be called by the bank's directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation where the bank is located and after sending notice to each shareholder of record by certified or registered mail at least 10 days prior to the meeting.

provides that the OCC will review the financial and managerial resources and future prospects of the national bank when considering a section 1204 reorganization.

Proposed § 5.32(e) provides dissenters' rights protections for section 1204 reorganizations. As provided in the Merger Act, this subsection permits any shareholder who has voted against the reorganization at a meeting or given notice in writing at or prior to the meeting to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization.

Section 5.32(f) of the proposal states that § 5.32 does not affect the applicability of the Bank Holding Company Act of 1956 (BHCA) to a transaction covered under § 5.32(b); applicants must indicate in their § 5.32 applications the status of any BHCA application they are required to file with the Board of Governors of the Federal Reserve System.

The OCC's approval of a § 5.32 application will expire if a national bank has not completed the reorganization within one year of the date of such approval. This is stated in proposed paragraph (g) of § 5.32.

Finally, proposed paragraph (h)(1) states that applicants shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements in the Federal securities laws and the OCC's securities regulations in 12 CFR part 11. Proposed paragraph (h)(2) states that applicants that are not subject to registration requirements under the Securities Exchange Act of 1934 shall submit proxy materials or information statements used in connection with a reorganization to the appropriate OCC district office no later than when such materials are sent to shareholders.

2. Section 1206 Mergers—Proposed § 5.33 (Revised)

Section 1206 of the AHEOA provides new authority for a national bank to merge with one or more of its nonbank affiliates, subject to the OCC's approval. Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers and consolidations with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal amends § 5.33 to include Section 1206 Mergers within its scope.

The proposal adds new application and prior OCC approval requirements for Section 1206 Mergers at the end of redesignated § 5.33(c). These requirements are similar to those for mergers of a national bank or state bank into a national bank under 12 U.S.C. 215a.

A number of new definitions are added to § 5.33(d) in order to implement section 1206. Current § 5.33(d) defines only the terms ''business combination,'' ''business reorganization,'' ''home state,'' and ''interim bank.'' The proposal amends the definition of ''business combination'' to include Section 1206 Mergers, but leaves the definitions of the other three terms unchanged.

Proposed § 5.33(d)(1) adds a definition of ''bank'' and defines it as any national bank or state bank. This definition is added because the term is used in the definition for ''nonbank affiliate.''

Proposed § 5.33(d)(4) defines the term ''company'' to mean a corporation, limited liability company, partnership, business trust, association, or similar organization. This term is proposed to be added because it is used in the definition of ''nonbank affiliate'' and ''control.''

Proposed § 5.33(d)(5) defines ''control,'' which is used in the definition of ''nonbank affiliate.'' Under the proposal, for business combinations under §§ 5.33(g)(4) and (5), a company or shareholder will be deemed to control another company if (1) the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company, or (2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company.

Because section 1206 provides merger authority for entities previously not included within the scope of § 5.33, the proposal adds the definition of ''nonbank affiliate'' to describe the entities that are covered by section 1206. Proposed § 5.33(d)(8) defines ''nonbank affiliate'' of a national bank as any company that controls, is controlled by, or is under common control with the national bank. However, banks and Federal savings associations are not included as ''affiliates'' because mergers with such entities are governed by statutes other than section 1206. Nonbank subsidiaries are considered to be nonbank affiliates for purposes of § 5.33.

Section 5.33(e)(3)(ii) currently requires that, if as a result of a business combination, a national bank obtains control of a new subsidiary, the bank must provide the same information regarding the new subsidiary's activities that would be required if the applicant were establishing a new subsidiary under either 12 CFR 5.34 (which addresses operating subsidiaries) or 12 CFR 5.39 (which addresses financial subsidiaries). The current rule contains an exception if the subsidiary was a subsidiary of a national bank. The proposal modifies this provision to take into account the fact that the bank may now merge with a nonbank affiliate that has a subsidiary.

Section 5.33(f) sets forth exceptions to the rules that generally govern the OCC's application procedures, such as requirements for the publication of notice or for hearings. Pursuant to § 5.33(f)(1), a national bank applicant that is subject to specific statutory notice requirements for business combinations is not subject to §§ 5.8(a), (b), or (c), which require, and prescribe the timing and contents of, public notice. Instead, a national bank applicant must follow the notice requirements in the applicable statute.

A national bank applicant in a Section 1206 Merger *resulting in a national bank* would be required to follow the notice requirements of 12 U.S.C. 215a. A national bank applicant in a Section 1206 Merger *resulting in a nonbank affiliate* would be required to follow the notice requirements of 12 U.S.C. 214a. We propose to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers.

In addition, we propose to state in § 5.33(f)(1) that §§ 5.10 (regarding public comments) and 5.11 (regarding requests for hearings) are not applicable as a general rule to Section 1206 Mergers. However, we also reserve the discretion to determine that some or all of the provisions in § 5.10 and § 5.11 apply in a Section 1206 Merger if an application presents significant and novel policy, supervisory, or legal issues.

Finally, we propose to make two technical changes to paragraph (f)(1). The reference to paragraph (g) for mergers or consolidations with a Federal savings association would be amended to refer more specifically to paragraph (g)(2) and the reference to a resulting state bank in the parenthetical following this reference would be corrected to refer to a national bank.

The proposal also adds a new § 5.33(g)(4) to address Section 1206 Mergers of national banks with their nonbank affiliates when the resulting entity is a national bank. Section 5.33(g)(4)(i) states that a national bank may enter into this type of Section 1206 Merger when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the

nonbank affiliate to engage in such mergers. This section also requires a national bank to obtain the OCC's approval.[7] Proposed § 5.33(g)(4)(ii) states that a national bank entering into such a merger must follow the procedures and requirements contained in 12 U.S.C. 215a (which addresses the merger of state banks into national banks), as if the nonbank entity were a state bank. The proposal applies the procedures and requirements in 12 U.S.C. 215a because section 215a addresses the same issues that arise in a Section 1206 Merger and its requirements are familiar to national banks. In addition, we believe that these procedures and requirements impose the least amount of burden on the participants consistent with our supervisory objectives in reviewing the proposed transactions. Proposed § 5.33(g)(4)(iii) states that a nonbank affiliate entering into such a merger is to follow the procedures in the law of the state or other jurisdiction under which the nonbank entity is organized. Proposed § 5.33(g)(4)(iv) states that the rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. Finally, § 5.33(g)(4)(v) of the proposal states that the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank as set forth in 12 U.S.C. 215a(a), (e), and (f), in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a, as if the nonbank affiliate were a state bank.

Further, the proposal adds a new § 5.33(g)(5), which addresses Section 1206 Mergers of uninsured national banks with their nonbank affiliates when the resulting entity is a nonbank affiliate. The proposal limits this type of Section 1206 Merger to national banks that are not insured banks (as defined in 12 U.S.C. 1813(h)). Prior to the enactment of section 1206, there was no efficient way for a national bank to cease its deposit-taking business, surrender its charter, and combine its business with that of an affiliate because no statutory provisions addressed this type of transaction. The section 1206 authority allows this transaction to take place in a merger and therefore allows the OCC to establish the procedures necessary when an uninsured national bank wishes to surrender its national charter but continue conducting lines of business that are authorized for the nonbank affiliate.

Proposed § 5.33(g)(5)(i) states that this type of Section 1206 Merger may be entered into when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows such mergers. It also provides that an uninsured national bank must obtain the OCC's approval for the transaction. Section 5.33(g)(5)(ii) states that a national bank entering into such a merger shall follow the procedures and requirements contained in 12 U.S.C. 214a (which addresses the merger of national banks into state banks), as if the nonbank entity were a state bank. Section 5.33(g)(5)(iii) states that a nonbank affiliate entering into such a merger shall follow the procedures and requirements in the law of the state or other jurisdiction under which the nonbank entity is organized. Section 5.33(g)(5)(iv) of the proposal states that dissenting national bank shareholders may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. In addition, the OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a merger with a nonbank affiliate that results in a nonbank affiliate if all parties agree that the determination is final and binding on each party and agree on how the OCC's expenses relating to the appraisal will be divided among the parties and paid to the OCC. The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized.

In addition, § 5.33(g)(5)(v) of the proposal states that the corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

Finally, the proposal adds a new paragraph (j)(1)(iv) to § 5.33 that permits applications for certain transactions under § 5.33(g)(4) to receive streamlined treatment. In order to qualify for such treatment, the acquiring bank must be an eligible bank, the resulting national bank must be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication must request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired in the transaction must not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

3. National Bank Directors—Proposed § 7.2024 (New)

Section 1205 of the AHEOA amends section 5145 of the Revised Statutes of the United States (12 U.S.C. 71) and the Banking Act of 1933 (12 U.S.C. 71a) regarding national bank directors. Section 1205 increases the maximum term a director may serve from one to not more than three years and permits a national bank to adopt bylaws that provide for staggering the terms of its directors in accordance with the OCC's regulations. In addition, this section permits the OCC to exempt a national bank from the otherwise applicable requirement that it have no more than 25 directors.

The proposal adds a new § 7.2024 conforming the OCC's rules to these provisions. Pursuant to proposed § 7.2024(a), national banks may adopt bylaws that provide for staggering the terms of their directors. Proposed § 7.2024(b) increases the permissible maximum term of national bank directors from one year to three years. Finally, subsection (c) provides that a national bank may increase the size of its board of directors above the statutory limit of 25 provided that the bank satisfies the notice requirements set out in that section.

III. Visitorial Powers

A. Background

1. 12 CFR 7.4000

Current § 7.4000(a) provides that only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, subject to exceptions provided in Federal law. Section 7.4000(a) goes on to define the regulatory, supervisory, and enforcement actions included within our visitorial powers, while § 7.4000(b) sets out several exceptions to

[7] If the national bank involved is insured, the transaction may also be subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c).

our exclusive authority that are created by Federal law.[8]

These provisions interpret and implement 12 U.S.C. 484. Paragraph (a) of that section states——

> No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

Paragraph (b) of the statute then permits lawfully authorized state auditors or examiners to review a national bank's records ''solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.''

In recent years, various questions have arisen with respect to the scope of the OCC's visitorial powers over national banks. In general, the questions fall into two broad categories: First, what activities conducted by a national bank are subject to the OCC's *exclusive* visitorial powers? At one end of the spectrum of activities, for example, are those, comprising the content of the business of banking and activities incidental thereto, expressly authorized or recognized as permissible for national banks by Federal statute or regulation, or by OCC issuance or interpretation. At the other end would be activities, not necessarily unique to a particular business, subject to public safety standards, such as fire codes and zoning requirements, that typically apply without reference to the content of an entity's business. Second, what is the meaning of certain exceptions to the OCC's exclusive visitorial powers that are provided in the statute, specifically the exception for visitorial powers ''vested in the courts of justice?''

This rulemaking contains amendments to § 7.4000 to clarify the application of section 484 to both areas. The first amendment adds a new paragraph (3) to § 7.4000(a) that clarifies the extent of national bank activities subject to the OCC's exclusive visitorial authority. The second amendment revises § 7.4000(b) to reflect the exceptions explicitly set out in section 484(a) for visitorial powers ''vested in the courts of justice'' and for Congress, and clarifies the OCC's interpretation of the ''vested in the courts of justice'' exception.

[8] Paragraph (c) of 12 CFR 7.4000 clarifies that the OCC owns reports of examination and addresses a bank's obligations with respect to these reports. This paragraph is unaffected by this rulemaking.

To present these proposed changes in context, we first discuss the background and purpose of section 484, and then summarize case law and OCC interpretations in which questions concerning visitorial powers are addressed. We conclude with a summary of the proposed amendments to § 7.4000.

2. The National Charter and the Role of Visitorial Powers

Congress enacted the National Currency Act (Currency Act) in 1863 and the National Bank Act the year after for the purpose of establishing a new national banking system that would operate distinctly and separately from the existing system of state banks. The Currency Act and National Bank Act were enacted to create a uniform and secure national currency and a system of national banks designed to help stabilize and support the post-Civil War national economy.

Both proponents and opponents of the new national banking system expected that it would supersede the existing system of state banks.[9] Given this anticipated impact on state banks and the resulting diminution of control by the states over banking in general,[10] proponents of the national banking system were concerned that states[11] would attempt to undermine it. Remarks of Senator Sumner illustrate the sentiment of many legislators of the time: ''Clearly, the bank must not be subjected to any local government, State or municipal; it must be kept absolutely and exclusively under that Government from which it derives its functions.'' Cong. Globe, 38th Cong., 1st Sess., at 1893 (April 27, 1864).[12]

The allocation of any supervisory responsibility for the new national banking system to the states would have been inconsistent with this need to protect national banks from state interference. Congress, accordingly, established a Federal supervisory regime and created a Federal agency within the Department of Treasury—the OCC—to carry it out. Congress granted the OCC the broad authority ''to make a thorough examination of all the affairs of [a national] bank,'' [13] and solidified this Federal supervisory authority by vesting the OCC with exclusive visitorial powers over national banks. These provisions assured, among other things, that the OCC would have comprehensive authority to examine all the affairs of a national bank and protected national banks from potential state hostility by establishing that the authority to examine and supervise national banks is vested *only* in the OCC, unless otherwise provided by Federal law.[14]

[9] Representative Samuel Hooper, who reported the bill to the House, stated in support of the legislation that one of its purposes was ''to render the law [Currency Act] so perfect that the State banks may be induced to organize under it, in preference to continuing under their State charters.'' Cong. Globe, 38th Cong. 1st Sess. 1256 (March 23, 1864). While he did not believe that the legislation was necessarily harmful to the state bank system, he did ''look upon the system of State banks as having outlived its usefulness * * *'' *Id.* Opponents of the legislation believed that it was intended to ''take from the States * * * all authority whatsoever over their own State banks, and to vest that authority * * * in Washington * * *'' Cong. Globe, 38th Cong., 1st Sess. 1267 (March 24, 1864) (statement of Rep. Brooks). Rep. Brooks made that statement to support the idea that the legislation was intended to transfer control over banking from the states to the Federal government. Given that the legislation's objective was to replace state banks with national banks, its passage would, in Rep. Brooks' opinion, mean that there would be no state banks left over which the states would have authority. Thus, by observing that the legislation was intended to take authority over state banks from the states, Rep. Brooks was not suggesting that the Federal government would have authority over state banks; rather, he was explaining the bill in a context that assumed the demise of state banks. Rep. Pruyn opposed the bill stating that the legislation would ''be the greatest blow yet inflicted upon the States * * *'' Cong. Globe, 38th Cong., 1st Sess. 1271 (March 24, 1864). *See also* John Wilson Million, *The Debate on the National Bank Act of 1863,* 2 Journal of Political Economy 251, 267 (1893–94) regarding the Currency Act. (''Nothing can be more obvious from the debates than that the national system was to supersede the system of state banks.'').

[10] *See, e.g., Tiffany* v. *National Bank of the State of Missouri,* 85 U.S. 409, 412–413 (1874) (''It cannot be doubted, in view of the purpose of Congress in providing for the organization of national banking associations, that it was intended to give them a firm footing in the different states where they might be located. It was expected they would come into competition with state banks, and it was intended to give them at least equal advantages in such competition. * * * National banks have been national favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the general government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the states, or to ruinous competition with state banks.''). *See also* B. Hammond, *Banks and Politics in America from the Revolution to the Civil War,* 725–34 (1957); P. Studenski & H. Krooss, *Financial History of the United States,* 155 (1st ed. 1952).

[11] For ease of reference, we use the term ''state'' in this preamble in a way that includes other non-Federal governmental entities.

[12] *See also Anderson* v. *H&R Block,* 287 F.3d 1038, 1045 (11th Cir. 2002) (''congressional debates amply demonstrate Congress's desire to protect national banks from state legislation. * * *'').

[13] Act of June 3, 1864, c. 106, § 54, 13 Stat. 116, codified at 12 U.S.C. 481.

[14] Writing shortly after the Currency Act and National Bank Act were enacted, then-Secretary of the Treasury, and formerly the first Comptroller of the Currency, Hugh McCulloch observed that ''Congress has assumed entire control of the currency of the country, and, to a very considerable extent, of its banking interests, prohibiting the interference of State governments. * * *'' Cong. Globe, 39th Cong., 1st Sess., Misc. Doc. No. 100, at 2 (April 23, 1866).

Courts have consistently recognized the unique status of the national banking system and the limits placed on states by the National Bank Act. The Supreme Court stated in one of the first cases to address the role of the national banking system that ''[t]he national banks organized under the [National Bank Act] are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end.'' *Farmers' and Mechanics' National Bank* v. *Dearing,* 91 U.S. 29, 33 (1875).

Subsequent opinions of the Supreme Court have been equally clear about national banks' unique role and status. *See Marquette National Bank* v. *First of Omaha Service Corp.,* 439 U.S. 299, 314–315 (1978) (''Close examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, * * * Congress intended to facilitate * * * a 'national banking system'.'' (citation omitted)); *Franklin National Bank of Franklin Square* v. *New York,* 347 U.S. 373, 375 (1954) (''The United States has set up a system of national banks as Federal instrumentalities to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositories.''); *Davis* v. *Elmira Savings Bank,* 161 U.S. 275, 283 (1896) (''National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States.'').

In *Guthrie* v. *Harkness,* 199 U.S. 148 (1905), the Supreme Court recognized how the National Bank Act furthered the objectives of Congress:

> Congress had in mind, in passing this section [*i.e.*, section 484] that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and examiners appointed by him, and, authorizing the appointment of a receiver, to take possession of the business with a view to winding up the affairs of the bank. It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. Except in so far as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power.

Id. at 159.

The Supreme Court also has recognized the clear intent on the part of Congress to limit the authority of states over national banks precisely so that the nationwide system of banking that was created in the Currency Act could develop and flourish. For instance, in *Easton* v. *Iowa,* 188 U.S. 220 (1903), the Court stated that Federal legislation affecting national banks—

> has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. * * * It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute. * * * [W]e are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and *confusion would necessarily result from control possessed and exercised by two independent authorities.*

Id. at 229, 231–232 (emphasis added). The Court in *Farmers' and Mechanics' Bank,* after observing that national banks are means to aid the government, stated—

> Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is ''an abuse, because it is the usurpation of power which a single State cannot give.''

Farmers' and Mechanics' Bank, 91 U.S. at 34 (citation omitted).

Consistent with the need for a uniform system of laws and uniform supervision that would foster the nationwide banking system, courts have interpreted the OCC's visitorial powers expansively. The Supreme Court in *Guthrie* noted that the term ''visitorial'' as used in section 484 derives from English common law, which used the term ''visitation'' to refer to the act of a superintending officer who visits a corporation to examine its manner of conducting business and enforce observance of the laws and regulations (citing *First National Bank of Youngstown* v. *Hughes,* 6 F. 737, 740 (6th Cir. 1881), *appeal dismissed,* 106 U.S. 523 (1883)). *Guthrie,* 199 U.S. at 158. ''Visitors'' of corporations ''have power to keep them within the legitimate sphere of their operations, and to correct all abuses of authority, and to nullify all irregular proceedings.'' *Id.* (citations omitted). The *Guthrie* Court also noted that visitorial powers include bringing ''judicial proceedings'' against a corporation to enforce compliance with applicable law. *Id.*[15] *See also Peoples Bank* v. *Williams,* 449 F. Supp. 254, 259 (W. D. Va. 1978) (visitorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs). Thus, section 484 establishes the OCC as the exclusive regulator of the business of national banks, except where otherwise provided by Federal law.

The OCC's exclusive visitorial authority complements principles of Federal preemption, to accomplish the objectives of the National Bank Act. The Supremacy Clause of the United States Constitution[16] provides that Federal law prevails over any conflicting state law. An extensive body of judicial precedent has developed over the nearly 140 years of existence of the national banking system, explaining and defining the standards of Federal preemption of state laws as applied to national banks.[17] Visitorial power is a closely

[15] Enforcement through judicial proceedings was the most common—and perhaps exclusive—means of exercising the visitorial power to enforce compliance with applicable law at the time section 484 was enacted into law. Administrative actions were not widely used until well into the 20th century. Thus, by vesting the OCC with exclusive visitorial power, section 484 vests the OCC with the exclusive authority to enforce, whether through judicial or administrative proceedings—except where otherwise provided by Federal law.

[16] U.S. Const. Art. VI, cl. 2 (''This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'').

[17] *See, e.g., Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25, 26, 32, 33 (1996) (''grants of both enumerated and incidental 'powers' to national banks [are] grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.'' States may not ''prevent or significantly interfere with the national bank's exercise of its powers.''); *Franklin National Bank,* 347 U.S. at 378–379 (1954) (federal law preempts state law when there is a conflict between the two; ''The compact between the states creating the Federal Government resolves them as a matter of supremacy. However wise or needful [the state's] policy, * * * it must give way to contrary federal policy.''); *Anderson National Bank* v. *Luckett,* 321 U.S. 233, 248, 252 (1944) (state law may not ''infringe the national banking laws or impose an undue burden on the performance of the banks' functions'' or ''unlawful[ly] encroac[h] on the rights and privileges of national banks''); *First National Bank* v. *Missouri,* 263 U.S. 640, 656 (1924) (Federal law preempts state laws that ''interfere with the purposes of [national banks'] creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States.''); *First National Bank of San Jose* v. *California,* 262 U.S. 366, 368–369 (1923) (''[National banks] are instrumentalities of the federal government. * * * [A]ny attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created.''); *McClellan* v. *Chipman,* 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not ''destro[y] or hampe[r]''

related authority, which Congress specifically addressed in section 484 to enable national banks to avoid inconsistent and potentially hostile application of standards by state authorities. Together, Federal preemption and the OCC's exclusive visitorial authority are defining characteristics of the national bank charter, which have fostered the development of the nationwide system of Federally chartered banks envisioned by Congress which now operates as part of the flourishing dual banking system of national and state-chartered banks in the United States.

Congress recently affirmed the OCC's exclusive visitorial powers with respect to national banks operating on an interstate basis in the Riegle-Neal Interstate Banking Act of 1994 (Riegle-Neal).[18] Although Riegle-Neal makes interstate branches of national banks subject to specified types of laws of a ''host'' state in which the bank has an interstate branch to the same extent as a branch of a state bank of that state, *except* when Federal law preempts the application of such state laws to national banks, the statute then makes clear that even where the state law is applicable, authority to enforce the law is vested in the OCC. *See* 12 U.S.C. 36(f)(1)(B) (''The provisions of any State law to which a branch of a national bank is subject under this paragraph shall be enforced, with respect to such branch, by the Comptroller of the Currency.''). This approach is another, and very recent, recognition of the broad scope of the OCC's exclusive visitorial powers with respect to national banks.

B. Description of the Visitorial Powers Proposal

This rulemaking proposes to amend § 7.4000 in two ways. First, it adds a new paragraph (3) to § 7.4000(a) that identifies the scope of the activities of national banks for which the OCC's visitorial powers are exclusive. Second, it amends § 7.4000(b) to reflect the exceptions to our exclusive visitorial authority as set out in section 484. We have also added an exception in proposed new § 7.4000(b)(vi) recognizing the authority for functional regulators to exercise the authority provided under the Gramm-Leach-Bliley Act.[19]

Circumstances when OCC visitorial authority is exclusive. As we have discussed, the purpose of section 484 is to enable national banks to conduct the banking business they are authorized to conduct under Federal law, subject only to the ''visitation,'' *i.e.*, inspection and supervision of their activities and the ability to compel compliance with standards for their operations, that is authorized under Federal law. Consistent with this purpose, the OCC's visitorial powers are exclusive (except where otherwise provided by Federal law) with respect to activities comprising or in furtherance of the content of national banks' business, that are expressly authorized or recognized as permissible for national banks under Federal law, including the OCC's regulations and interpretations. Examples include application of state standards (to the extent they are not preempted) to the content of the business conducted by a national bank, such as standards concerning the bank's transactions and relations with its customers, or directives or prescriptions regarding the components of, or income or expenses of, the bank's business. In these situations, section 484 directs that, unless Federal law supplies an exception, the OCC is exclusively authorized to determine what standards apply to a national bank's activities and whether a national bank's conduct complies with applicable standards, and to enforce adherence to those standards.

Proposed new § 7.4000(a)(3) would embody this clarification. It states, in paragraph (i), that, unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to activities expressly authorized or recognized as permissible for national banks under Federal law or regulation, or by OCC issuance or interpretation, including the content of those activities and the manner in which, and standards whereby, those activities are conducted. Proposed paragraph (ii) then provides that the question of whether the OCC possesses the exclusive authority to assess the applicability of a state law and determine and enforce compliance by national banks is determined solely by Federal law, including section 484 and § 7.4000.[20] Pursuant to § 7.4006, these standards also determine the scope of the OCC's exclusive visitorial authority with respect to national banks' operating subsidiaries.[21]

Exceptions to OCC exclusive visitorial authority. Section 484 also creates several exceptions to the exclusive visitorial authority it creates. Our current rule acknowledges, in § 7.4000(a), that our exclusive authority is subject to various exceptions created by Federal law. Current § 7.4000(b) lists several instances where Federal law creates such an exception. However, the current rule does not address two exceptions expressly set out in section 484(a): the exceptions ''vested in the courts of justice'' and for Congress (and its committees). We propose to amend § 7.4000(b) to include the exceptions for courts of justice and Congress, and, in so doing, clarify how the ''vested in the courts of justice'' exception operates.[22]

The ''vested in the courts of justice'' exception to the OCC's exclusive visitorial powers is best understood by referring to the purpose of the statute, the plain language of the ''vested in the courts of justice'' exception, and the structure of section 484. These points are addressed in order, below.

Courts must be able to compel a national bank to produce books and records in connection with private litigation involving the bank. However, one might argue that the issuance of a subpoena by a court would itself be a ''visitation,'' even if the underlying litigation was not. Such a reading would effectively immunize national banks from civil litigation, a result that Congress clearly did not intend.

Accordingly, section 484 recognizes an exception to the OCC's exclusive visitorial authority for visitorial powers ''vested in the courts of justice.'' This exception is consistent with case law, settled well before section 484 was

national bank functions); *First National Bank of Louisville* v. *Commonwealth of Kentucky,* 76 U.S. (9 Wall.) 353, 362–63 (1870) (national banks subject to state law that does not ''interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government''); *Bank of America et al.* v. *City and County of San Francisco et al.*, 309 F.3d 551, 561 (9th Cir. 2002) (''[s]tate attempts to control the conduct of national banks are void if they conflict with federal law, frustrate the purposes of the National Bank Act, or impair the efficiency of national banks to discharge their duties.'') (citation omitted); *Association of Banks in Insurance, Inc.* v. *Duryee,* 270 F.3d 397, 403–404 (6th Cir. 2001) (''The Supremacy Clause 'invalidates state laws that ''interfere with, or are contrary to,'' federal law'. * * * A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal.'') (citations omitted).

[18] Pub. L. 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[19] Pub. L. 106–102, § 302, 113 Stat. 1338, 1407–08 (Nov. 12 1999), codified at 15 U.S.C. 6712.

[20] To the extent questions arise as to whether an activity is within the scope of the OCC's exclusive visitorial powers as defined in the regulation, the OCC is prepared to issue interpretive opinions on a case-by-case basis.

[21] *See* 66 FR 34784, 34788 (July 2, 2001). In the preamble to our final rule containing § 7.4006 we noted that the OCC's operating subsidiary regulation, 12 CFR 5.34(e)(3), states that ''an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent [national] bank.'' Further, we noted that ''[o]perating subsidiaries often have been described as the equivalent of departments or divisions of their parent banks.''

[22] We have not encountered questions concerning the application of the exception for Congress and its committees. Therefore, we propose only to include that exception in our rule without elaboration.

enacted into law, concluding that courts are vested with certain inherent powers. *See, e.g., United States* v. *Hudson and Goodwin,* 11 U.S. 32, 34 (1812) (''Certain implied powers must necessarily result to our Courts of justice from the nature of their institutions.''); *State* v. *Morrill,* 16 Ark. 384, 1855 WL 607 (Ark.) (1855) (finding that there are express and implied powers, including the power to punish action found in contempt of court, that are inherently vested in courts). In order to avoid a constitutionally impermissable usurpation of the judiciary's powers, Congress included the ''vested in the courts of justice'' exception in section 484 and thereby recognized the inherent authority of courts of justice to exercise those powers required to fulfill the courts' responsibilities.

Congress clearly did not intend, however, to create new visitorial authority that could be exercised by state authorities when it recognized the authority of courts of justice. It would be completely contrary to the express purposes of section 484 to read the ''vested in the courts of justice'' exception as enabling state authorities to accomplish exactly what Congress deliberately and expressly intended states *not* to be able to do—namely, inspect and supervise the activities of national banks and compel their adherence to a variety of state-set standards.

This purpose is effectuated by the plain language of the statute. The exception permits the exercise of ''visitorial powers'' that are ''*vested* in the courts of justice,'' powers, in other words, that *courts possess.* Section 484 *does not create new powers* for state executive, legislative, or administrative authorities to supervise and regulate national banks. It grants no *new* authority and thus does not authorize states to bring suits or enforcement actions that they do not otherwise have the power to bring.

To read the exception to permit state authorities to inspect, regulate, supervise, direct, or restrict the activities of national banks simply by filing a complaint in a court would be to *create* a visitorial power that states do not otherwise possess under Federal law. Section 484 by its express terms simply does not create such boundless visitorial powers for state authorities.[23]

Where section 484 *does* recognize visitorial authority for states in section 484(b), by contrast, it is specific and narrow, and expressly stated as an *exception* to the general exclusivity of the OCC's visitorial powers recognized in section 484(a).

This construction of the ''vested in the courts of justice'' exception also is supported by the rule of statutory construction that holds that ''[s]tatutory language must be read in context and a phrase 'gathers meaning from the words around it.' '' [24] *Jones* v. *United States,* 527 U.S. 373, 389 (1999) (quoting *Jarecki* v. *G.D. Searle & Co.,* 367 U.S. 303, 307 (1961)); *Tasini* v. *New York Times Company, Inc.,* 206 F.3d 161, 166–167 (2nd Cir. 2000), *cert. granted,* 531 U.S. 978 (2000), *aff'd,* 533 U.S. 483 (2001) (*noscitur a sociis* applied to a statute similar in format to section 484). Immediately following the ''vested in the courts of justice'' exception is an exception that preserves visitorial authority for Congress or any committee thereof. This exception addresses the need of Congress and its committees to issue subpoenas compelling the production of bank records or witnesses in fulfillment of congressional oversight responsibilities. Similarly, the exception set out in paragraph (b) of section 484 (preserving a state's ability to examine a national bank's books and records as necessary to ensure compliance with state unclaimed property and escheat laws) is narrowly focused on a specific purpose. Thus, the statutory context of the ''vested in the courts of justice'' exception also leads to the conclusion that it is comparably focused on a particular function, not an exception that endorses an indirect route to accomplish precisely what Congress clearly sought to prevent—state regulation and inspection of the banking business of national banks.[25]

Under this construction of section 484, states remain free to seek a declaratory judgment from a court as to whether a particular state law applies to the Federally-authorized business of a national bank or is preempted. However, if a court rules that a state law is not preempted, enforcement of a national bank's compliance with that law is within the OCC's exclusive purview. *See National State Bank, Elizabeth, N.J.* v. *Long,* 630 F.2d 981, 988 (3rd Cir. 1980) (''[W]e find ourselves unable to agree with the district court's determination that state officials have the power to issue cease and desist orders against national banks for violations of the [state's] antiredlining statute. Congress has delegated enforcement of statutes and regulations against national banks to the Comptroller of the Currency.'').[26]

In addition, this position does not preclude private civil actions or actions brought by other governmental entities pursuant to a Federal grant of authority. *See, e.g. Guthrie, supra,* 199 U.S. 148 (an individual shareholder action against a bank for access to its books and records); *Bank of America National Trust & Savings Ass'n* v. *Douglas,* 105 F.2d 100 (D.C. Cir. 1939) (service of subpoenas on a national bank by the SEC in connection with an investigation under the Securities Exchange Act of 1934).

Accordingly, in light of the purpose of the ''vested in the courts of justice'' exception, its plain language, and the narrow focus of other exceptions in section 484, we propose to amend § 7.4000(b) to state that national banks shall be subject to such visitorial powers as are vested in the courts of justice to issue orders or writs compelling the production of information or witnesses. We propose further to clarify that this exception does not create or expand any authority of states or other governmental entities to inspect, regulate, or supervise national banks' activities, or to compel national banks' adherence to restrictions or mandates concerning the content of those activities or the manner in which, or standards whereby, those activities are conducted.

IV. Additional Changes to Parts 5, 7, 9, and 34

A. Part 5 Amendments

Section 5.20 of our regulations contains the requirements that govern the organization of a national bank. The proposal amends § 5.20(e)(1) to provide that the newly organized bank may be a special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking. The purpose of this

[23] We note that one Federal district court has reached a different conclusion, but we respectfully disagree with the parts of the opinion in *First Union National Bank et al.* v. *Burke,* 48 F. Supp. 2d 132, 145–146 (D. Ct. 1999), that suggest a different reading of the exception, since the opinion did not analyze the purpose, plain language, and structure of section 484. Moreover, we note that the *Burke* court agrees that a state may not directly enforce state law against national banks. *See* 48 F. Supp. 2d at 146.

[24] This maxim is sometimes referred to as the *noscitur a sociis* doctrine.

[25] The *noscitur a sociis* doctrine as applied to the original National Bank Act also leads to the conclusion that only the OCC may enforce applicable laws. The visitorial powers language initially appeared in section 54 of the National Bank Act. The section that preceded it governed the forfeiture of a bank's charter upon a knowing violation of the National Bank Act, while the section that followed addressed penalties for embezzling. This location of section 484 in a series of enforcement-related provisions underscores the point that Congress intended for the OCC to have the exclusive authority to bring enforcement actions against national banks.

[26] This applies to enforcement of criminal statutes as well. *Easton* v. *Iowa,* 188 U.S. 220 (1903).

proposed change is to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are within the business of banking.

Section 5.33(e) of our regulations contains a listing of factors the OCC considers in evaluating applications for business combinations. These factors are based upon the factors set forth in the Bank Merger Act, 12 U.S.C. 1828(c), and the Community Reinvestment Act, 12 U.S.C. 2903. As part of the USA PATRIOT Act,[27] Congress amended the Bank Merger Act by adding an additional factor to be considered in evaluating merger transactions. This factor requires the responsible agencies to consider the effectiveness of any insured depository institution involved in a proposed merger in combating money laundering activities.[28] The proposal conforms our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

Current § 5.34(e)(5)(iv) permits certain national banks to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary by providing after-the-fact notice to the OCC if the operating subsidiary conducts certain activities listed in § 5.34(e)(5)(v). That list currently includes the underwriting of credit-related insurance consistent with section 302 of the Gramm-Leach-Bliley Act. However, in Corporate Decision 2001–10 (April 23, 2001) and Corporate Decision 2000–16 (August 29, 2000), the OCC found that credit-related reinsurance products satisfy GLBA section 302's statutory requirements and are ''authorized products.'' The proposal therefore amends 12 CFR 5.34(e)(5)(v)(L) to add reinsuring of credit-related insurance to the list of activities eligible for after-the-fact notice requirements.

B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deletes as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.[29]

C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be (a)(2) funds that are primarily invested in real estate or other assets that are not readily marketable. A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we propose to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable will be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds' assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this provision does not negate the need to provide a current value at the time of such admission or withdrawal.

D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending, making that authority subject only to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and ''such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.'' The text of the regulation was not revised to reflect a statutory amendment to section 371 referring to 12 U.S.C. 1828(o) and thus the proposal updates the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged, as are the implementing provisions of section 34.4, which set out by regulation certain types of state laws that are specifically preempted (section 34.4(a)), and provide that the OCC will apply recognized principles of Federal preemption in considering whether other types of state laws apply to real estate lending by national banks for purposes of issuing orders pursuant to section 371 (section 34.4(b)).

V. Technical Amendments

The proposal contains the following technical amendments:

- 12 CFR part 3, appendix A, section 3(a)(2)(ix) currently cross-references a definition of ''General obligation of a State or political subdivision'' but contains the wrong regulatory citation for that definition. The definition in question has been moved from 12 CFR 1.3(g) to 12 CFR 1.2(b). The proposed revision will correct the citation. Also in part 3 appendix A, section 4(a)(11)(ii) the references to sections (4)(a)(8)(i) and (ii) are corrected to refer to sections (4)(a)(9)(i) and (ii), respectively.
- The citations to FDIC regulations in current 12 CFR 6.4(c)(1)(i) and (ii) are incorrect. The proposal amends the citations to correct them.
- Current 12 CFR 7.1016(a) contains a footnote reference and accompanying footnote text. The footnote reference number is 30, but should be 1. The proposal makes this change.
- Current 12 CFR 9.20(b) contains a reference to SEC rules 17 CFR 240.17Ad–1 through 240.17Ad–16. A new rule, 240.17Ad–17, has been added, so the proposal changes the reference to 240.17Ad–16 to reflect the addition.
- Current 12 CFR 28.16(e), dealing with uninsured deposit notices, makes a reference to an FDIC regulation, 12 CFR 346.7, which was removed in 1998. The proposal would correct this citation to refer to the current rule for uninsured deposit notices which can now be found at 12 CFR 347.207.

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999),

[27] Pub. L. 107–56 (Oct. 26, 2001).

[28] The FDIC recently updated its Statement of Policy on Bank Merger Transactions to include this new factor at 67 FR 48178 (July 23, 2002). This update only provides the new provision. The complete Policy Statement as it existed before this update may be found at 63 FR 44761 (August 20, 1998).

[29] National banks engaged in providing the services permitted by 12 CFR 5.34(e)(5)(v)(J) and (K) must comply with applicable regulations of the Internal Revenue Service (IRS) governing the provision of such services. Information about the IRS regulations may be obtained at *www.irs.treas.gov.*

requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments to the OCC's regulations relating to the AHOEA are permissive provisions that will be used only by banks that wish to take advantage of the new transactions, procedures, or corporate governance options permitted by the statute as implemented by the regulations. Proposed 12 CFR 5.33(g)(5) reduces burden by implementing a simpler way to accomplish a merger of a national bank into one of its nonbank affiliates. The amendments regarding the OCC's visitorial powers simply identify the scope of activities for which the agency's visitorial powers are exclusive and clarify how an exception to such powers applies. These amendments simply provide the OCC's analysis and do not impose any new requirements or burdens. As such, they will not result in any adverse economic impact.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements in this notice of proposed rulemaking are contained in §§ 5.32, 5.33, and 7.2024.

OMB has reviewed and approved the information collection requirements contained in this rule under OMB Control Number 1557–0014, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Comptroller's Corporate Manual (Manual) explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual embodies all required procedures, forms, and regulations regarding OCC corporate decisions.

The information collection requirements imposed by §§ 5.32 and 5.33 are contained in the Business Combinations booklet in the Manual and are part of the total requirement.

The respondents are national banks.

Estimated number of respondents: 270.

Estimated number of responses: 270.

Average hours per response: 20.6.

Estimated total burden hours: 5,562.

The information collection requirements imposed by § 7.2024 are included in the Corporate Organization booklet in the Manual, along with several other corporate requirements.

The respondents are national banks.

Estimated number of respondents: 1,000.

Estimated number of responses: 1,000.

Average hours per response: .5 hour.

Estimated total burden hours: 500 hours.

The burden estimates represent total burden for national banks' compliance with the information collection requirements associated with corporate organization matters and business combination activities.

The OCC has a continuing interest in the public's opinion regarding collections of information. The OCC invites comments on:

(1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments may be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8–4, Washington, DC 20219. Comments

may also be sent by fax to 202–874–4889 or by e-mail to *jessie.dunaway@occ.treas.gov.*

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0014, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov.*

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has ''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.'' In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

This proposal may have Federalism implications, as that term is used in the Order. Therefore, before promulgating a final regulation based on this proposal, the OCC will, to the extent practicable and permitted by law, seek consultation with state and local officials, include a Federalism summary impact statement in the preamble to the final rule, and make available to the Director of OMB any written communications we receive from state or local officials.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

National banks.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 3, 5, 6, 7, 9, 28, and 34 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

Appendix A to Part 3—[Amended]

2. In appendix A to part 3:

A. In section 3, amend paragraph (a)(2)(ix) by removing ''12 CFR 1.3(g)'' and adding in its place ''12 CFR 1.2(b)''; and

B. In section 4, amend paragraph (a)(11)(ii) by removing, ''section(4)(a)(8)(i) and (ii)'' and adding in its place ''section (4)(a)(9)(i) and (ii)''.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

3. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; 215a–2; 215a–3; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

4. In § 5.20, a new second sentence is added to paragraph (e)(1) to read as follows:

§ 5.20 Organizing a Bank.

* * * * *

(e) *Statutory requirements*—(1) *General.* * * * The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. * * *

* * * * *

Subpart C—Expansion of Activities

5. A new § 5.32 is added to read as follows:

§ 5.32 Expedited procedures for certain reorganizations.

(a) *Authority.* 12 U.S.C. 93a and 215a–2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures*—(1) *General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any material change in the bank's business plan or any material change from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and

(v) Describes any changes to the bank's business plan resulting from the reorganization.

(3) *Financial and managerial resources and future prospects.* In reviewing an application under this section, the OCC will consider the impact of the proposed affiliation on the financial and managerial resources and future prospects of the national bank.

(e) *Rights of dissenting shareholders.* Any shareholder of a bank who has voted against an approved reorganization at the meeting referred to in paragraph (d)(2)(iv) of this section, or who has given notice of dissent in writing to the presiding officer at or prior to that meeting, is entitled to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization, as provided by section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(b) and (c), for the merger of a national bank.

(f) *Approval under the Bank Holding Company Act.* This section does not affect the applicability of the Bank Holding Company Act of 1956. Applicants shall indicate in their application the status of any application required to be filed with the Board of Governors of the Federal Reserve System.

(g) *Expiration of approval.* Approval expires if a national bank has not completed the reorganization within one year of the date of approval.

(h) *Adequacy of disclosure.* (1) An applicant shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements of the Federal securities laws and the OCC's securities regulations at 12 CFR part 11.

(2) Any applicant not subject to the registration provisions of the Securities Exchange Act of 1934 shall submit the proxy materials or information statements it uses in connection with the reorganization to the appropriate district office no later than when the materials are sent to the shareholders.

6. In § 5.33:

A. Paragraph (a) is revised;

B. Paragraph (b) is redesignated as paragraph (c), paragraph (c) is redesignated as paragraph (b), newly redesignated paragraph (b) is revised and a sentence is added at the end of newly redesignated paragraph (c);

C. Paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(2), (d)(3), (d)(6), and (d)(7), respectively; newly designated paragraph (d)(2) is revised; and new paragraphs (d)(1), (d)(4), (d)(5), and (d)(8) are added;

D. New paragraph (e)(1)(v) is added;

E. Paragraph (e)(3)(ii) is revised;

F. The second sentence of paragraph (f)(1) is revised and two new sentences are added at the end;

G. New paragraphs (g)(4) and (g)(5) are added;

H. At the end of paragraph (j)(1)(ii), remove the term ''or'';

I. At the end of paragraph (j)(1)(iii), remove ''.'' and add ''; or''; and

J. New paragraph (j)(1)(iv) is added to read as follows:

§ 5.33 Business combinations.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a-1, 215a-3, 215c, 1815(d)(3), 1828(c), 1831u, and 2903.

(b) *Scope.* This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application for a business combination between a national bank and another depository institution resulting in a national bank or between a national bank and one of its nonbank affiliates; and

(2) Requirements of notices and other procedures for national banks involved in other combinations with depository institutions.

(c) *Licensing requirements.* * * * A national bank shall submit an application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) *Definitions*—(1) *Bank* means any national bank or any state bank.

(2) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution, the assumption by a national bank of deposit liabilities of another depository institution, or a merger between a national bank and one or more of its nonbank affiliates.

* * * * *

(4) *Company* means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under §§ 5.33(g)(4) and (5), a company or shareholder is deemed to *control* another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company, or

(ii) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

* * * * *

(8) *Nonbank affiliate* of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(e) * * *

(1) * * *

(v) The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

* * * * *

(3) * * *

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to 12 CFR §§ 5.34 or 5.39.

* * * * *

(f) *Exceptions to rules of general applicability.* (1) *National bank applicant.* * * * A national bank applicant shall follow, as applicable, the public notice requirements contained in 12 U.S.C. 1828(c)(3) (business combinations), 12 U.S.C. 215(a) (consolidation under a national bank charter), 12 U.S.C. 215a(a)(2) (merger under a national bank charter), paragraph (g)(2) of this section (merger or consolidation with a Federal savings association resulting in a national bank), paragraph (g)(4) of this section (merger with a nonbank affiliate under a national bank charter), and paragraph (g)(5) (merger with nonbank affiliate not under national bank charter). Sections 5.10 and 5.11 ordinarily do not apply to mergers of a national bank with its nonbank affiliate. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.10 and 5.11 apply.

* * * * *

(g) * * *

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a-3 resulting in a national bank*—(i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting

institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a, as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a-3 resulting in a nonbank affiliate*—(i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv)(A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

* * * * *

(j) * * *

(1) * * *

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

* * * * *

7. In 5.34, paragraph (e)(5)(v)(L) is revised to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(5) * * *

(v) * * *

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712).

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

8. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o.

Subpart A—Capital Categories

9. In § 6.4, paragraphs (c)(1)(i) and (ii) are revised to read as follows:

§ 6.4 Capital measures and capital category definitions.

* * * * *

(c) * * *

(1) * * *

(i) Maintains the pledge of assets required under 12 CFR 347.210; and

(ii) Maintains the eligible assets prescribed under 12 CFR 347.211 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

10. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, 92, 92a, 93, 93a, 481, 484, 1818.

Subpart A—Bank Powers

11. Section 7.1008 is revised to read as follows:

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

12. In § 7.1016(a), footnote 30 is redesignated as footnote 1.

Subpart B—Corporate Practices

13. A new § 7.2024 is added to read as follows:

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the twenty-five member limit. A national bank seeking to increase the number of its directors must notify the OCC any time

the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

Subpart D—Preemption

14. In § 7.4000:

A. Paragraphs (a)(3)(i) and (a)(3)(ii) are added; and

B. Paragraph (b) is revised to read as follows:

§ 7.4000 Visitorial powers.

(a) * * *

(3)(i) Unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to activities expressly authorized or recognized as permissible for national banks under Federal law or regulation, or by OCC issuance or interpretation, including the content of those activities and the manner in which, and standards whereby, those activities are conducted.

(ii) The question of whether the OCC possesses the exclusive visitorial authority to assess the applicability of a state law to a national bank, and determine and enforce compliance with that law, shall be determined exclusively by Federal law, including 12 U.S.C. 484 and this § 7.4000.

(b) *Exceptions to the general rule.* Under 12 U.S.C. 484, the OCC's exclusive visitorial powers are subject to the following exceptions:

(1) *Exceptions authorized by Federal law.* National banks are subject to such visitorial powers as are provided by Federal law. Examples of laws vesting visitorial power in other governmental entities include laws authorizing state or other Federal officials to:

(i) Inspect the list of shareholders, provided that the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(ii) Review at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(iii) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3505(c));

(iv) Ascertain the correctness of Federal tax returns (26 U.S.C. 7602);

(v) Enforce the Fair Labor Standards Act (29 U.S.C. 211); and

(vi) Functionally regulate certain activities, as provided under the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

(2) *Exception for courts of justice.* National banks are subject to such visitorial powers as are vested in the courts of justice to issue orders or writs compelling the production of information or witnesses. This exception does not authorize state or other governmental entities to inspect, regulate, or supervise the activities of national banks, or to compel production of information or adherence to restrictions or requirements concerning the content of those activities or the manner in which, or standards whereby, those activities are conducted.

(3) *Exception for Congress.* National banks are subject to such visitorial powers as shall be, or have been, exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

* * * * *

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

15. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

16. In § 9.18, paragraph (b)(4)(i) is revised to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(4) *Valuation*—(i) *Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A bank shall determine the value of the fund's assets that are not readily marketable at least once a year.

* * * * *

17. In § 9.20, amend paragraph (b), by removing the term ''240.17Ad–16'' and adding in its place the term ''240.17Ad–17.''

PART 28—INTERNATIONAL BANKING ACTIVITIES

18. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

Subpart B—Federal Branches and Agencies of Foreign Banks

19. In § 28.16, amend paragraph (e), by removing the term ''12 CFR 346.7'' and adding in its place the term ''12 CFR 347.207.''

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

20. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

21. Section 34.3 is revised to read as follows:

§ 34.3 General rule.

(a) A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate (''real estate loans''), subject to 12 U.S.C. 1828(o) and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

Dated: January 27, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–2641 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 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 Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to prevent the inability to operate the switch, which could result in failure to activate the related operational system. Such failure could adversely affect the operation and control of the airplane.

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

comments on this proposed rule on or before March 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–02–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 1 electronically must contain ''Docket No. 2003–CE–02–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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. 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. 2003–CE–02–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that certain push switch cap spigots on the electrical power management overhead panel have failed to activate their related operational system when engaged. The plastic these push switch cap spigots are made of is not strong enough and causes the switch cap spigots to break when engaged. The defective switch caps have the caption of ON, OPEN, or have no caption or symbol located on the electrical power management overhead panel, part number 972.81.32.102, that has not been modified to Mod A status.

The FOCA has reported the following three incidents in which the switch failed to activate its related operational system when engaged:

—Inability to switch the probe heating on;

—Inability to open the Inertial Separator; and

—Inability to switch the Taxi Light on.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in failure to activate certain operational systems. Such failure could result in adverse operation and control of the airplane.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

What are the provisions of this service information? The service bulletin includes procedures for replacing certain push switch caps on the electrical power management overhead panel with parts of improved design.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–659, dated November 30, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland 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 FOCA 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 FOCA; 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 Pilatus PC–12 and PC–12/45 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 incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 45 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 replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	The manufacturer will provide replacement parts free of charge.	$180	$180 × 45 = $8,100.

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:

Pilatus Aircraft LTD.: Docket No. 2003–CE–02–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 321, 401 through 457, and 463 that:

(1) Have an overhead panel, part number (P/N) 972.81.32.102 (or FAA-approved equivalent part number), installed that has not been modified to Mod A status; and

(2) 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 prevent the inability to activate certain operational systems. Such failure could adversely affect the operation and control of the airplane.

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

Actions	Compliance	Procedures
(1) Replace all switch caps that have a caption of ON, OPEN, and ones with no caption or symbol on them.	Within the next 100 hours time-in-service after the effective date of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(2) Using a permanent marker, mark MOD Status A on the overhead panel identification label.	Prior to further flight after completing the actions required in paragraph (d)(2) of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(3) Do not install an overhead panel, P/N 972.81.32.102, unless it has been modified to Mod A status.	As of the effective date of this AD	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

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

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

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

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph 5 (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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD Number HB 2002–659, dated November 30, 2002.

Issued in Kansas City, Missouri, on January 29, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2994 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–23–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric CF34–8C1 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 General Electric (GE) CF34–8C1 turbofan engines. This proposal would require replacing combustion chamber assemblies, part number (P/N) 4126T87G04, before accumulating a new reduced cyclic life limit. This proposal is prompted by stress and life analysis conducted by GE. The actions specified by the proposed AD are intended to prevent rupture of the combustion chamber assembly and possible engine fire.

DATES: Comments must be received by April 8, 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–23–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: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; 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–23–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–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

GE has conducted a refined stress analysis for low-cycle fatigue (LCF) life on GE CF34–8C1 combustion chamber assemblies, P/N 4126T87G04, and has found a new critical location with a lower LCF life limit than the currently published life limit. Exceeding the LCF life limit could lead to crack initiation and propagation to rupture. This condition, if not corrected, could result in rupture of the combustion chamber assembly and possible engine fire.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF34–8C1 engines of the same type design, the proposed AD would require replacing the combustion chamber assembly, P/N 4126T87G04, before accumulating 28,000 cycles-since-new (CSN) and prohibit installation of any combustion chamber assembly, P/N 4126T87G04 that has 28,000 CSN or greater into any engine.

Economic Analysis

There are approximately 115 GE CF34–8C1 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 75 engines are installed on airplanes of U.S. registry. The FAA also estimates that it would take approximately 24 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75,000 per engine. Based on these figures and the prorated cost of lost life of 9,800 CSN per engine, the total cost of the proposed AD to U.S. operators is estimated to be $1,600,000.

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:

General Electric: Docket No. 2002–NE–23–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric (GE) CF34–8C1 turbofan engines with combustion chamber assembly, part number (P/N) 4126T87G04, installed. These engines are installed on, but not limited to Bombardier Inc. Model CL–600–2C10 (CRJ–700 & 701) 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent rupture of the combustion chamber assembly and possible engine fire, do the following:

(a) Replace combustion chamber assembly, P/N 4126T87G04, at or before the combustion chamber assembly accumulates 28,000 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any combustion chamber assembly, P/N 4126T87G04, that exceeds 28,000 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

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

Issued in Burlington, Massachusetts, on January 30, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2995 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel –1B, –1D, and –1D1 Series Turboshaft 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 Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. This proposal would require replacement of modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard. This proposal is prompted by several reports of 2nd stage gas generator turbine blade failures. The actions specified by the proposed AD are intended to prevent 2nd stage gas generator turbine blade failure resulting in uncommanded engine in-flight shutdown.

DATES: Comments must be received by April 8, 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–38–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.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; 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–38–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–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. The DGAC advises that at least five incidents of 2nd stage gas generator turbine blade failure have occurred since the introduction of the TU 204 standard to modules M03. Although the TU 204 standard was introduced to provide improved gas generator turbine blade thermal protection, the manufacturer has determined that due to the increased mass of the 2nd stage gas generator turbine blades introduced by the TU 204 standard, the blade root stress level is too high and can lead to blade failure.

Manufacturer's Service Information

Turbomeca S.A. has issued Service Bulletin (SB) No. 292 72 0258, Update No. 1, dated April 4, 2002, for Arriel –1B engines, and SB No. 292 72 0265, Update No. 1, dated August 18, 2000, for Arriel –1D and –1D1 engines, that specify the cancellation of Modification TU 204 by replacing modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard. The DGAC has issued AD 2002–258(A), dated May 15, 2002, in order to ensure the airworthiness of these Turbomeca S.A. engines in France.

Bilateral Agreement Information

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

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require replacing modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard at the next engine shop visit, but no later than August 31, 2003. The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 1,319 engines of the affected design in the worldwide fleet. The FAA estimates that 48 engines installed on helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 12 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $160,000 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $7,714,560. Turbomeca has advised the FAA that material and tooling may be provided at no cost to the operator, thereby substantially reducing the cost of the proposed rule.

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:

Turbomeca S.A.: Docket No. 2002–NE–38–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. These engines are installed on, but not limited to Eurocopter AS–350B ''Astar'' helicopters.

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

Compliance: Compliance with this AD is required at the next engine shop visit, but no later than August 31, 2003, unless already done.

To prevent 2nd stage gas generator turbine blade failure resulting in uncommanded engine in-flight shutdown, do the following:

(a) For Arriel –1B engines, replace TU 204 Standard modules M03 with modules M03 not modified to TU 204 standard, in accordance with Paragraphs 2.A. through 2.C. of Turbomeca S.A. Service Bulletin (SB) No. 292 72 0258, Update No. 1, dated April 4, 2002.

(b) For Arriel –1D and –1D1 engines, replace TU 204 Standard modules M03 with modules M03 not modified to TU 204 standard, in accordance with Paragraphs 2.A. through 2.C. of Turbomeca S.A. SB No. 292 72 0265, Update No. 1, dated August 18, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

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

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2002–258(A), dated May 15, 2002.

Issued in Burlington, Massachusetts, on January 31, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2996 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–39–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S76A, B, and C helicopters. The AD would require removing non-conforming main landing gear brake discs (discs) and replacing them with different part-numbered airworthy discs. It would also require revising the Rotorcraft Flight Manual (RFM) to adjust takeoff and landing distances until the discs are replaced. This proposal is prompted by the manufacture of some discs using inferior materials. The actions specified by the proposed AD are intended to prevent reduced braking performance and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, 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 will be considered before taking action on the proposed rule. The proposals contained in this document 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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–39–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

This document proposes the adoption of a new AD for Sikorsky Model S76A, B, and C helicopters that would require, within 60 days, determining if discs, part number (P/N) 5014067, are installed. If so, replacing them with discs, P/N 5007672, and re-identifying brake assembly, P/ N 5007555 and P/N 5007555–1, as brake assembly P/N 5007555–3, and brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, is required within 90 days. The proposed AD would also require revising the RFM to adjust the Category A rejected takeoff distance, the Category A landing distance, and the Category B landing distance by multiplying the distance by 1.67 to obtain the corrected distance until the discs are replaced. This proposal is prompted by the manufacture of some discs using inferior materials, resulting in degraded braking performance. The actions specified by the proposed AD are intended to prevent reduced braking performance and subsequent loss of control of the helicopter. Removing the discs, P/N 5014067, and replacing them with discs, P/N 5007672, would be a terminating action for the requirements of the proposed AD.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin (ASB) No. 76–32–27, dated April 30, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002; and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002. The ASB's describe procedures for replacing any non-conforming discs, reidentifying brake assemblies, and revising takeoff and landing distances in the RFM until the discs are replaced.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would require, within 60 days, determining if non-conforming discs are installed, and if so, replacing them within 90 days with airworthy discs, P/N 5007672. It would also require revising the RFM to increase the takeoff and landing distances for helicopters with non-conforming discs installed until the discs are replaced. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

The FAA estimates that 180 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to determine if non-conforming discs are installed, and 1.25 work hours per helicopter to remove and replace and re-identify any non-conforming discs. The average labor rate is $60 per work hour. Required parts would cost approximately $1,902 per disc, and there are two discs per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $703,620 to replace the discs throughout the fleet.

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

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

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. 2002–SW–39–AD.

Applicability: Model S76A, B, and C helicopters, with main landing gear brake assembly (brake assembly), part number (P/N) 5007555, 5007555–1, or 5007555–2 installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking performance and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 60 days, determine if a main landing gear brake disc (disc), part number (P/N) 5014067, is installed in the braking assembly in accordance with:

(1) Section III-Accomplishment Instructions, paragraph 1.A. through 1.D., of Aircraft Braking Systems Corporation Alert Service Bulletin S76–32–A24, dated April 10, 2002 (ASB A24) for braking assembly, P/N 5007555 and P/N 5007555–1, and

(2) Section III-Accomplishment Instructions, paragraph 1.A. and 1.B., of Aircraft Braking Systems Corporation Alert Service Bulleting S76–32–A25, dated May 15, 2002 (ASB A25), for braking assembly, P/N 5007555–2.

(b) If disc, P/N 5014067, is installed, within 90 days, remove that disc and replace it with disc, P/N 5007672, and re-identify:

(1) Brake assembly, P/N 5007555 and P/N 5007555–1, as brake assembly, P/N 5007555–3, in accordance with the conversion of brake assembly instructions on page 6 of ASB A24, and

(2) Brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, in accordance with the conversion of brake assembly instructions on page 6 of ASB A25.

Note 2: Sikorsky Aircraft Corporation ASB No. 76–32–27, dated April 30, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002, and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002.

(c) Until all installed discs, P/N 5014067, on the helicopter are replaced with disc, P/N 5007672, and all brake assemblies are re-identified in accordance with paragraph (b) of this AD, before further flight, increase the Category A-Rejected Takeoff Distance, the Category A-Landing Distance, and the Category B-Landing Distance as stated in the current Rotorcraft Flight Manual (RFM) by multiplying these rejected takeoff and landing distances by a factor of 1.67.

Note 3: There are temporary revisions to the RFM available from the helicopter manufacturer that documents increased rejected takeoff and landing distances.

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

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

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

Issued in Fort Worth, Texas, on January 29, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3031 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–27–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) helicopters. This proposal would require a one-time inspection of the adjustable stop screws of the magnetic brake assembly; repairing, as appropriate, certain mechanical damage to the cyclic and collective flight control magnetic brake arm assembly (arm assembly), if necessary; and installing the stop screw with the proper adhesive, adjusting the arm assembly travel and applying slippage marks. This proposal is prompted by reports that the magnetic brake adjustable screws have backed out, which limited travel of the arm assembly. The actions specified by this proposed AD are intended to detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

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 will be considered before taking action on the proposed rule. The proposals contained in this document 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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–27–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 222, 222B, and 222U helicopters with Instrument Flight Rule (IFR) kits, part number (P/N) 222–706–013, installed, and all delivered spare magnetic brakes, P/N 222–706–013, manufactured by Memcor Truohm, Inc., under P/N MP 498–3. Transport Canada advises that the stop screws, P/N MS51959–3, of the magnetic brake, P/N 204–001–376–003 (Memcor Truohm P/N MP 498–3), were installed without the proper adhesive.

Bell has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–87, for Model 222 and 222B helicopters, and ASB No. 222U–01–58, for Model 222U helicopters, both dated January 19, 2001. Both ASB's specify a one-time inspection of the magnetic brake adjustable stop screw, P/N M551959–3; repairing any arm assembly mechanical damage created by the screws; and installing the stop screw with the proper adhesive and adjusting the arm assembly shaft travel. Transport Canada classified these ASB's as mandatory and issued AD No. CF–2002–17, dated March 4, 2002, to ensure the continued airworthiness of these helicopters in Canada.

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

This unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed AD would require inspecting the adjustable stop screws of the magnetic brake assembly to ensure they are installed correctly; repairing the arm assembly, if necessary; installing the stop screw with the proper adhesive; adjusting the arm assembly travel; and applying slippage marks. The actions would be required to be accomplished in accordance with the ASB's described previously.

The FAA estimates that 92 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,785. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $364,780, assuming all parts are replaced.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, a Division of Textron Canada: Docket No. 2002–SW–27–AD.

Applicability: Model 222, 222B, and 222U helicopters, with a magnetic brake, part number (P/N) 204–001–376–105 or 107, installed, that was manufactured by Memcor Truohm, Inc. as P/N MP498–105 or –107, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required within 100 hours time in service and before installation of any affected magnetic brake, unless accomplished previously.

To detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter:

(a) Inspect and, if necessary, repair, adjust, and apply slippage marks to the magnetic brake assembly in accordance with the Accomplishment Instructions, paragraphs 5. through 11. in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–87, applicable to Model 222 and 222B helicopters, or ASB No. 222U–01–58, applicable to Model 222U helicopters, both dated January 19, 2001, except if damage to

the arm assembly exceeds 0.030 inch (0.762 mm), replace the magnetic brake assembly with an airworthy magnetic brake assembly. Contacting the manufacturer is not required.

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

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

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–17, dated March 4, 2002.

Issued in Fort Worth, Texas, on January 29, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3030 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4727–N–01]

Real Estate Settlement Procedures Act (RESPA); Rule on Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers: Target Publication Date of Final Rule

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

ACTION: Notice of target publication date of RESPA final rule.

SUMMARY: On July 29, 2002, HUD published its proposed rule on ''RESPA; Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers'' (RESPA rule). This notice advises the public of HUD's anticipated publication date for the RESPA final rule.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Office of RESPA and Interstate Land Sales, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number) or for legal questions Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Steven J. Sacks or Teresa L. Baker (Senior RESPA Attorneys); Room 9262, telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: On December 9, 2002, over 60 Federal departments, agencies and commissions (collectively, Federal agencies) published, in the **Federal Register**, their respective agendas of regulations and regulatory plans. This compilation, referred to as the Unified Agenda, is published semiannually under the coordination of the Office of Management and Budget. The Unified Agenda provides for uniform reporting by Federal agencies of regulatory and deregulatory actions that are under development and expected to be issued within the next six to 12 months. In the fall, each Federal agency's semiannual agenda of regulations is accompanied by the agency's regulatory plan. The regulatory plan contains the Federal agency's most important significant regulatory actions that the agency expects to issue in the new fiscal year. Both documents provide the agencies' estimates of publication dates for their proposed and final rules. HUD's fall semiannual agenda of regulations and regulatory plan can be found in the December 9, 2002, **Federal Register** at 67 FR 74550 and 67 FR 74140, respectively.

HUD's regulatory plan advised that HUD's RESPA final rule would be published in January 2003. (*See* 67 FR 74147). This date is incorrect. HUD anticipates that its RESPA final rule will be published in the spring of 2003.

Dated: January 30, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–2973 Filed 2–6–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 5]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT

ACTION: Notice of workshop.

SUMMARY: This notice announces a two-day workshop on proposed regulations on ''Pipeline Integrity Management in High Consequence Areas'', jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA). This workshop is intended to give participants an understanding of the integrity management program requirements being proposed in the rule and the process to comment on the proposed rulemaking. An OPS representative will give an overview of the proposed regulation and answer questions about it.

DATES: The workshop is open to all. There is no registration fee. This workshop will be held on February 20, 2003, from 8 a.m. to 5 p.m., and on February 21, 2003, from 8 a.m. to 12 noon.

ADDRESSES: The workshop will be held at the Renaissance Houston Hotel, 6 Greenway Plaza, Houston, Texas, 713–629–1200.

FOR FURTHER INFORMATION CONTACT: Contact Mike Israni by phone at (202) 366–4571, by e-mail at *mike.israni@rspa.dot.gov*. General information about RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov*. For other details on this workshop contact Linda A. Thomas of INGAA at 202–216–5925.

SUPPLEMENTARY INFORMATION:

Background

RSPA/OPS has just proposed a rule to require operators of gas transmission pipelines to develop integrity management programs. The programs include conducting baseline and periodic assessments of pipeline segments. This follows rulemaking that requires integrity management programs for hazardous liquid pipelines.

Although the hazardous liquid and natural gas programs are structured somewhat differently to accommodate the differences between the two types of pipeline systems, both integrity management programs are designed to identify the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of pipelines operating across the United States.

On January 9, 2002, RSPA/OPS began the integrity management rulemakings for gas transmission lines by proposing a definition of high consequence areas (See 67 FR 1108). We finalized the high consequence area definition on August 6, 2002 (67 FR 50824). On January 28, 2003 (68 FR 4278), we proposed a new 49 CFR 192.763 setting out integrity management program requirements for gas transmission pipelines affecting those areas. The comment period for this proposal closes on March 31, 2003.

The INGAA Foundation and AGA are conducting this workshop to give participants a better understanding of the proposed rule's requirements as they are intended to apply to gas transmission pipelines, and the process to comment on the proposed rulemaking. An OPS representative will give an overview of the proposed regulation and answer questions related to it.

The preliminary agenda for this AGA/INGAA sponsored workshop on Integrity Management for Natural Gas Pipelines is as follows:

February 20, 2003

Pipeline Safety Legislation—An overview of the recently passed legislation and its impact on the proposed integrity management program requirements.

Overview of Proposed Regulation—An OPS representative will discuss the intent and structure of the recently published proposed integrity management rule for gas transmission pipelines.

HCA Identification—An industry panel will discuss the high consequence area definition and the proposed refinement of that definition in the proposed integrity management rule.

Risk Assessment—An industry panel will discuss the risk assessment process detailed in the proposed rulemaking and compare it to present practices.

Plan Development—An industry panel will discuss the plan development as envisioned in the proposed rule and compare it to present practices.

IMP Implementation & *Data Integration*—Issues surrounding data integration and implementing the administrative process in a company will be discussed by an industry group.

February 21, 2003

Mitigation & Repair—An industry panel will discuss the proposed requirements for mitigation and remediation.

Performance Metrics—An industry panel will discuss performance measures for an integrity management program.

Open Forum and O&A—The audience will be able to query all the panelists and state their opinions during this session. Because this involves an open rulemaking, RSPA/OPS will include detailed notes of this workshop in the docket for the proposed rule. However, participants wishing to comment on the proposed rule should comment directly in the docket rather than rely on the notes of the workshop.

Issued in Washington, DC, on February 3, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–3079 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030130026–3026–01; I.D. 121202B]

RIN 0648–AM30

Fisheries of the Exclusive Economic Zone off Alaska; Halibut Fisheries in U.S. Convention Waters Off Alaska; Management Measures to Reduce Seabird Incidental Take in the Hook-and-Line Halibut and Groundfish Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to current regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) and in the Pacific halibut fishery in U.S. Convention waters off Alaska. The proposed revisions to the current seabird measures are intended to enhance the current requirements and further mitigate interactions with the short-tailed albatross (*Phoebastria albatrus*), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in hook-and-line fisheries in and off Alaska. This action is necessary to effect such regulatory revisions and is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the Migratory Bird Treaty Act, and the ESA.

DATES: Comments must be received by March 10, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, (907) 586–7424, or *Kim.Rivera@noaa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. The Halibut Act, 16 U.S.C. 773 *et seq.*, authorizes the Council to develop, and NMFS to implement, halibut fishery regulations that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

This proposed action is designed to reduce the incidental take of seabirds in hook-and-line fisheries. The Magnuson-Stevens Act emphasizes the importance of reducing bycatch to maintain sustainable fisheries. Although seabirds are not included within the Magnuson-Stevens Act's 'bycatch' definition,

efforts to reduce the incidental take of seabirds in fisheries are consistent with the Magnuson-Stevens Act's objective to conserve and manage the marine environment. In addition, the NMFS guidelines for implementing the Magnuson-Stevens Act's national standards for fishery conservation and management note that other applicable laws, such as the Marine Mammal Protection Act, the ESA, and the Migratory Bird Treaty Act (MBTA), require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e. marine mammals and birds.

National and International Bycatch Reduction Initiatives

Several national and international initiatives highlight the need to address fisheries bycatch issues, including the incidental take of seabirds. The United Nation's Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries, adopted in 1995, contains a call for states to ''take appropriate measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species,...and promote, to the extent practicable, the development and use of selective, environmentally safe and cost effective gear and techniques.'' (Article 7.6.9.) NMFS's strategic document, *Managing the Nation's Bycatch: Programs, Activities, and Recommendations for the National Marine Fisheries Service (NMFS Bycatch Plan)*, sets forth national objectives, goals, and recommendations, all intended to address current programs and future efforts to reduce bycatch and bycatch mortality of marine resources, including seabirds. Consistent with the Code of Conduct for Responsible Fisheries, the FAO held a technical consultation to address the incidental take of seabirds in longline fisheries. The resulting *International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (IPOA-S), is a voluntary plan endorsed by the FAO's Committee on Fisheries (COFI) in February 1999 and ultimately adopted by the FAO Conference in November 1999. The United States developed and is implementing a *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (NPOA-S) to fulfill our national responsibility described in the IPOA-S. Implementation is being carried out at the regional level through team efforts by a NMFS National Seabird Coordinator and designated staff in each NMFS region and fishery science center. Efforts are also coordinated with designated staff in each of the regional fishery management councils, regional offices of the U.S. Fish & Wildlife Service (USFWS), and the Department of State. Additionally, NMFS has formed an International Bycatch Reduction Task Force that will work with foreign governments and regional fisheries management organizations to reduce the bycatch of sea turtles and seabirds in longline fisheries and promote the conservation and management of sharks. NMFS believes that its complementary implementation of the Code of Conduct for Responsible Fisheries, the NMFS Bycatch Plan, the IPOA-S, and the NPOA-S should result in the reduction of seabird incidental take in the Alaska hook-and-line fisheries. This plan will require the joint and cooperative efforts of NMFS, the Councils, the USFWS, the affected commercial longline fishing industry, environmental non-governmental organizations, and other interested groups.

Incidental Seabird Mortality off Alaska

Awareness of the issue of seabird incidental take and incidental mortality in commercial fishing operations off Alaska has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the GOA and BSAI hook-and-line groundfish fisheries (62 FR 10016 March 5, 1997, and 62 FR 23176 April 29, 1997) and in the Pacific halibut fishery off Alaska (62 FR 65635 December 15, 1997, and 63 FR 11161 March 6, 1998) and the EA/RIR/FRFAs prepared for those actions.

Council Action

At the December 1998 Council meeting, industry representatives requested that the Council revise and strengthen the seabird avoidance measures that are currently required by Federal regulation. Current regulations require that operators of vessels greater than or equal to 26 ft (7.9 m) LOA and using hook-and-line gear in the groundfish and halibut fisheries must employ one or more of the following seabird avoidance measures: (i) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks; (ii) tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks (multiple devices may be employed); (iii) deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or (iv) deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

All operators of these vessels must also conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds. This request was made because two short-tailed albatrosses were taken in September 1998 and because the industry group perceives that some individual fishermen may not always be using seabird avoidance measures as carefully as is necessary to effectively reduce seabird incidental take.

These takes of endangered short-tailed albatross in the BSAI groundfish fishery highlight a seabird incidental take problem. Seabird avoidance measures must be used consistently and conscientiously if they are to be effective at reducing seabird incidental take. Under the ESA section 7 consultation on the 1999 GOA and BSAI groundfish fisheries, the USFWS anticipated that four short-tailed albatrosses could be taken in 1999 and 2000. USFWS extended its 1999 Biological Opinion until superseded by a subsequent biological opinion. No short-tailed albatrosses have been reported taken since 1998. Based on the ESA section 7 consultation in 1998 on the effects of the Pacific halibut fishery, the USFWS anticipates that two short-tailed albatrosses could be taken every 2 years. If the 2–year incidental take limit is exceeded in either the groundfish or the halibut fisheries, NMFS must immediately reinitiate section 7 consultation and review with USFWS the need for possible modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses.

The NMFS North Pacific Groundfish Observer Program office has documented incidental take of seabird species in the GOA and BSAI groundfish fisheries since 1989. Estimates of the annual seabird incidental take for the Alaska groundfish fisheries, based on 1993 to

1999 data, indicate that approximately 15,700 seabirds are killed (taken) annually in the combined BSAI and GOA groundfish hook-and-line fisheries (14,500 in the BSAI and 1,200 in the GOA) at the average rates of 0.10 and 0.03 birds per 1,000 hooks in the BSAI and in the GOA, respectively. Approximately 60 percent of the 15,700 seabirds taken are northern fulmars (Fulmaris glacialis), the most abundant seabird species off Alaska. Preliminary analyses of 2000 and 2001 observer data indicate that whereas the seabird take estimates for the year 2000 in the combined BSAI and GOA groundfish hook-and-line fisheries were greater than the 1999 estimates, the number of seabirds estimated taken in 2001 in these fisheries was reduced by about one-third (to approximately 10,500, of which about 55 percent were northern fulmars). The rate of birds taken (number of birds per 1,000 hooks) in the BSAI in 2001 was about one-half that of the 2000 rate. The incidental catch rate may have decreased because fishermen are becoming more diligent and skilled using seabird avoidance measures, outreach efforts may have been successful, the 1999–2000 University of Washington's Washington Sea Grant Program (WSGP) research program's collaborative industry approach may have acted to change fishermen behavior and improve the effective deployment of seabird avoidance measures, or some other, unknown, factor(s). The annual seabird incidental catch estimates based on observer data from 1993 through 2001 exhibit a great deal of inter-annual variation, as did the take numbers and bird attack rates on baits in the WSGP study. Various non-anthropogenic factors could be involved, such as, bird abundance and distribution and/or climatic and oceanographic conditions.

After initial action to propose revised seabird avoidance measures at its February 1999 meeting, the Council took final action at its April 1999 meeting and recommended regulatory revisions to improve and strengthen the effectiveness of the required seabird avoidance measures and reduce the incidental take of short-tailed albatrosses and other seabird species.

In October 2000, NMFS informed the Council of its decision to await research results from a 2–year study (1999 and 2000) by the WSGP on the effectiveness of seabird avoidance measures used in hook-and-line fisheries off Alaska before proceeding with rulemaking to revise the existing regulations. Such an investigation was required in a Biological Opinion issued by the USFWS. If warranted by the research results, NMFS would modify the existing seabird avoidance regulations to improve the effectiveness of avoidance measures or devices.

In October 2001, WSGP presented research results, recommendations, and its final report Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries (available at *http://www.wsg.washington.edu/pubs/seabirds/seabirdpaper.html*) to the Council and NMFS. The Council took initial action at this meeting and final action at its December 2001 meeting.

Council's Final Action Based in Part on WSGP Research Results and Recommendations

For complete details of the research, results, and recommendations, see the WSGP final report. In summary, the WSGP research program compared seabird incidental take mitigation strategies over 2 years (1999 and 2000) in two major Alaska demersal longline fisheries: the Individual Fishing Quota (IFQ) fishery in the GOA and Aleutian Islands for sablefish and halibut and the Bering Sea catcher-processor longline fishery for Pacific cod. The program identified possible deterrents and tested them on active fishing vessels under typical fishing conditions. The avoidance measures tested were paired streamer lines, single streamer lines, weighted groundline, line shooter, lining tube, and a combination of paired streamer lines and weighted groundline. Rigorous experimental tests of seabird avoidance measures on the local abundance, attack rate, and hooking rate of seabirds in both fisheries were conducted on vessels over 60 ft (18.3 m) LOA. On vessels this size (larger vessels), paired streamer lines of specified performance and material standards were found to successfully reduce seabird incidental take in all years, regions, and fleets (88 percent to 100 percent relative to controls with no deterrent). Single streamer lines of specified performance and material standards were slightly less effective than paired streamer lines, reducing seabird incidental take by 96 percent and 71 percent in the sablefish and cod fisheries, respectively. This study represents the largest of its kind in the world with over 1.2 million hooks being set in the sablefish fishery and over 6.3 million hooks being set in the cod fishery component of the 2–year research program.

Seabird Avoidance Measures for Smaller Vessels

The Council's Science and Statistical Committee (SSC) generally agreed with the WSGP research study and found that the study was excellent in its conception, execution and analysis, regarding the reduction of seabird incidental take by large vessels participating in the Pacific cod and the sablefish and halibut IFQ longline fisheries. The SSC noted, however, that the WSGP recommendations, while appropriate and useful for reduction of seabird incidental take by the large vessels in the longline fishery, may not be appropriate for application on smaller vessels, particularly small vessels fishing in the inside waters of southeast Alaska. The SSC suggested that short-tailed albatrosses do not frequent the inside waters of southeast Alaska, and therefore less stringent regulations to avoid seabird incidental take may be appropriate. The SSC identified a need for additional study of the necessity of, and methods for, incidental take reduction on small vessels. The SSC also queried whether small vessels may not be able to deploy streamer lines as specified for the larger vessels of the longline fleet. The SSC suggested that fishermen of the small-vessel segment of the industry cooperate in developing new information, equivalent to that now available from the larger vessels on the frequency of incidental take and the most appropriate methods for incidental take reduction.

Given the similarities in the small boat longline fleet of southeast Alaska, Prince William Sound, and nearshore waters of Cook Inlet, as well as the rarity of albatrosses and other pelagic bird species in these inside waters, the Council recommended less stringent measures for vessels using hook-and-line gear in these inside waters. The proposed seabird avoidance requirements would be based on area fished, vessel length, vessel type, and gear type. This proposal would address the varying characteristics found in the fishing operations of the very diverse demersal hook-and-line fleet for groundfish and Pacific halibut off Alaska. For vessels greater than 26 ft (7.9 m) LOA, and less than or equal to 55 ft (16.8 m) LOA, the applicable performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements. The Council recommends that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for this class of vessels is warranted and investigate if vessels less than or equal to 55 ft (16.8

m) LOA should be exempted from the seabird avoidance measures when fishing at night from November 1 to April 1.

Summary of Council Recommendations

The Council's recommendations to NMFS for revised seabird avoidance measures are: (1) Seabird avoidance gear requirements would be based on area fished, vessel length, vessel type, and gear type, (2) Specified performance and material standards for the required avoidance measures would be required of larger vessels and suggested as guidelines for smaller vessels, (3) Specified gear would be required to be onboard the vessel, available for inspection upon the request of an authorized officer or observer, and used while hook-and-line gear is being deployed, (4) Measures would apply in specified areas to operators of specified vessels using hook-and-line gear to fish for groundfish or halibut, (5) Offal discharge methods designed to reduce interactions leading to seabird mortalities would be specified, and (6) A Seabird Avoidance Plan, a new reporting requirement, would be required to be onboard the vessel. The Seabird Avoidance Plan is described in more detail later in this preamble.In addition to the Council's recommendation for proposed regulatory revisions, the Council also made recommendations for suggested actions for a comprehensive seabird incidental take reduction program that addresses education, outreach, regulatory compliance, and enforcement. Such a program would improve the effectiveness of seabird avoidance measures at reducing the incidental take of endangered short-tailed albatrosses and other seabird species.

Weather Safety Factor

Council discussion and deliberation of alternative revisions to the seabird avoidance measures indicated support of WSGP recommendations for the larger vessels (greater than 55 ft (16.8m) LOA) and necessary modifications of these measures for smaller vessels (between 26 (7.9 m) and 55 ft (16.8m) LOA). The WSGP final report notes that weather conditions exist in which the vessel captain would not want crew on the buoy deck deploying or adjusting streamer lines, although fishing would still be possible. Included in the WSGP recommendation was a weather safety factor that in winds exceeding 45 knots (storm, or Beaufort 9, conditions), the deployment of streamer lines be discretionary. NMFS clarifies in this proposed rule that this weather safety factor applies to the deployment of buoy bag lines, single streamer lines, and paired streamer lines. Adverse weather conditions could impact the deployment of gear on vessels regardless of the vessel's size, so, the weather safety factor would be important when considering the deployment of buoy bag lines and single streamer lines (on smaller vessels) just as it would be with the deployment of paired streamer lines (on larger vessels).

Seabird Data Collection by Observers

In addition to the regulatory requirements for seabird avoidance measures, an integral part of the comprehensive seabird avoidance program is collection of data on seabirds by onboard observers. The data currently collected by observers are detailed in the EA/RIR/IRFA prepared for this proposed rule and include a count of the number of seabirds by species that are encountered in the sampled portion of each observed haul. To clarify its intent that these encountered seabird specimens are to be made available by the vessel crew to the observer, NMFS includes an explicit requirement in this proposed rule that all seabirds from the observer-sampled portions of hauls using hook-and-line gear be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls.

Exemption for Vessels 32 ft (9.8m) LOA or Less in state waters of IPHC Area 4E

In 2001, halibut accounted for the vast majority of fish harvested by these small vessels. It is not known if any of the sablefish harvested by vessels in the 30 to 35 ft (9.1 to 10.7 m) LOA category was harvested by vessels less than 32 ft (9.8m) LOA. Because of the difficulty of using surveillance aircraft to identify the species of fish harvested (e.g. halibut or groundfish), NMFS proposes in this rule to exempt any vessel less than 32 ft (9.8m) LOA fishing in state waters of IPHC Area 4E from using seabird avoidance measures, not just those vessels fishing halibut. NMFS has determined that if additional vessels are exempted by this language, it would not have a significant impact on the take of short-tailed albatrosses or other seabird species.

Vessels Required to Use Seabird Avoidance Measures

The factors potentially affecting seabird hooking and entanglement on hook-and-line gear are complex and may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of time baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; and physical condition of the bird. When establishing effective requirements that reduce the potential for seabird interactions with gear and the associated mortality of seabirds, it is desirable to consider or account for any of these factors, to the extent possible and practicable. Based on information from the WSGP study, the Council's SSC, several USFWS marine bird surveys, and anecdotal information from the commercial longline fleet off Alaska, the proposed seabird avoidance measures required of vessel operators would vary according to area fished, vessel length, vessel type, and gear type.

The current seabird avoidance regulations apply to operators of federally permitted vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI, and federally permitted vessels fishing for groundfish with hook-and-line gear in waters of the State of Alaska that are shoreward of the GOA and the BSAI, and to operators of vessels fishing for Pacific halibut in U.S. Convention waters off Alaska. Since the inception of requirements for seabird avoidance measures off Alaska, NMFS has required all hook-and-line vessel operators at risk of incidentally taking short-tailed albatrosses and/or other seabird species to use these measures, regardless of geographic area fished (i.e. EEZ, state waters, inside waters) or target fishery (i.e. groundfish, halibut, IFQ, CDQ). As new information on the necessity of, and methods for, incidental take reduction on small vessels becomes available, the applicability of the requirements could be revised as appropriate.

At its March 2002 meeting, the Alaska Board of Fisheries (Board) approved a proposal that will change state groundfish regulations to parallel these new Federal regulations governing seabird avoidance measure requirements for operators in hook-and-line fisheries.

Operators of vessels less than 26 ft (7.9m) LOA currently are not required to choose from the seabird avoidance options found at § 679.24(e)(3), i.e., towing a streamer line or buoy, underwater setting, and night setting. Operators of smaller vessels typically set many fewer hooks, set gear at slower speeds, fish closer to shore, and land many fewer fish (therefore, have less and more sporadic offal discharge). These characteristics contribute to attracting fewer birds to their vessels.

Some evidence suggests that large vessels may attract more seabirds than do smaller vessels and experience a higher seabird incidental take rate (see Vessel Size Considerations in section 4.1.2 of the EA/RIR/IRFA for this action). This proposed rule would exempt operators of vessels 32 ft (9.8 m) LOA or less fishing for halibut, including those fishing for halibut and groundfish, in IPHC Area 4E within 0 to 3 nm from the required use of seabird avoidance measures. Of the 1,733 vessels that landed halibut and/or sablefish in the IFQ and CDQ programs, only 219 vessels landed halibut in IPHC Area 4E. Ninety-eight percent of those were vessels less than 32 ft (9.8 m) LOA. Those small vessels fishing in Area 4E landed 150,000 lb (68,039 kg) of halibut, all of the halibut harvested in Area 4E and less than one-third of 1 percent of the total annual harvest in 2001. These landings represent such a very small portion of the total harvest, that any associated incidental take of seabirds is insignificant to non-existent. Testimony from local fishermen from these Western Alaska communities in the CDQ Program indicate they are fishing in areas very close to shore and never take seabirds. Sighting of short-tailed albatrosses have not been reported in nearshore areas of Area 4E. A few sightings have occurred in the perimeter of the area, beyond the nearshore areas fished by these very small vessels. Survey or sightings information on other seabird species in the area is not currently available.

Proposed Seabird Avoidance Requirements

NMFS proposes seabird avoidance measures that would apply to the operators of vessels using hook-and-line gear for (1) Pacific halibut in the IFQ and Community Development Quota (CDQ) management programs (0 to 200 nm), (2) IFQ sablefish in EEZ waters (3 to 200 nm) and waters of the State of Alaska (0 to 3 nm), except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program (Clarence Strait, Chatham Strait), and (3) Groundfish (except IFQ sablefish) with hook-and-line gear in the U.S. EEZ waters off Alaska (3–200 nm).

Operators of all applicable vessels using hook-and-line gear would be required to comply with the following bird line requirements:

For Applicable Vessels Operating in Inside Waters (NMFS Area 649, NMFS Area 659, and State Waters of Cook Inlet): (1) A minimum of 1 buoy bag line of a specified performance standard would be required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 buoy bag line of a specified performance standard is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA and with masts, poles, or rigging, (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (4) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Operating in the EEZ (not including NMFS Area 659): (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) Except for vessels using snap gear, a minimum of paired streamer lines of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Using Snap Gear: (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging.

Other seabird avoidance devices and methods include weights added to groundline, a buoy bag line or streamer line of specified performance standards, and strategic offal discharge to distract birds away from the setting of baited hooks, that is, discharge fish, fish parts (i.e. offal) or spent bait to distract seabirds away from the main groundline while setting gear.

Gear Performance and Material Standards

Current information indicates that bird deterrent devices must be carefully constructed with the deterrent purpose in mind if they are to be effective. Given the variability of vessel sizes and configurations in the hook-and-line fisheries off Alaska, a single set of specific construction standards for bird lines would not be universally effective or practical. To enhance the effectiveness and improve the enforcement of seabird avoidance measures, the proposed rule would specify the gear performance and material standards for larger vessels (vessels greater than or equal to 55 ft (16.8 m) LOA). Voluntary guidelines for gear performance and material standards for smaller vessels (vessels greater than or equal to 26 ft (7.9m) and less than 55 ft (16.8 m) LOA) are provided and vessel operators are encouraged to comply with them.

Proposed Standards for Larger (Vessels Greater than 55 ft (16.8 m) LOA) Vessels Paired Streamer Standard

NMFS proposes that larger vessels deploy a minimum of two streamer lines while setting hook-and-line gear. Preferably, both streamer lines will be deployed prior to the first hook being set. At least one streamer line must be deployed before the first hook is set and both streamers must be fully deployed within 90 seconds. An exception to this standard would exist in conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), where it would be acceptable to fly a single streamer from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the deployment of streamer lines would be discretionary. Further, streamer lines would have to be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over. For vessels deploying gear from the stern, the streamer lines would have to be deployed from the stern, one on each side of the main groundline. For vessels deploying gear from the side, the streamer lines would have to be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

Materials Standard:

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the

mainline to 0.25 m above the waterline in the absence of wind.

Snap Gear Streamer Standard

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

Guidelines for Standards for Smaller Vessels

For vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA, a performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements.

Performance Guidelines for Bird Line Requirements are as follows:

Buoy Bag Line Standard

A buoy bag line (32.8 to 131.2 ft (10 to 40 m) length) is deployed so that it is within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water. The buoy bag line must extend beyond the point where the main groundline enters the water.

Single Streamer Standard

A single streamer line must be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

Materials Standard:

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the mainline to 0.25 m above the waterline in the absence of wind.

Snap Gear Streamer Guideline

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

The Council recommended that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for small vessels is warranted. In the summer of 2002, USFWS funded the WSGP to conduct such a study, in cooperation with NMFS. WSGP researchers worked with owner/operators of small vessels (26 ft (7.9 m) to 55 ft (16.8 m) LOA) in several Alaska ports to test the sink rate of bird avoidance lines under the following scenarios: (1) Towing a single streamer line from small vessels with masts, poles, or rigging, while using conventional hook-and-line gear; (2) Towing a single buoy bag line from small vessels without masts, poles, or rigging, while using conventional hook-and-line gear (e.g. vessels such as bow setters and stern setters); and (3) Towing a single streamer line from small vessels using snap gear. The results of this study will be used to evaluate the effectiveness of the guidelines that have been suggested by the Council. If warranted by the research, improvements could be made to the guidelines which could then be promulgated into regulations.

Proposed Offal Requirements

The offal discharge regulation would be amended to require that prior to offal discharge, embedded hooks would be removed from offal. Otherwise, scavenging birds could become hooked while feeding on discharged fish offal. Hooked birds could eventually suffer increased mortality. Removing embedded hooks prior to fish offal being discharged is one of the mitigation measures identified in the FAO's IPOA-S.

WSGP researchers observed on some cod vessels the continual discharge of residual bait and in some cases the discharge of offal through dedicated chutes or pipes at the stern during the set, directly over baited hooks. This attracted birds into the area where baits were sinking, aggravating seabird interactions with the gear (WSGP final report). Eliminating such directed discharge of residual bait or offal over sinking longlines would reduce the attractiveness of this area to birds and thus reduce the likelihood of birds attacking the bait and becoming hooked and drowning.

Seabird Reporting Requirements

Regulations at § 679.5(a)(7)(ix)(C)(*3*) currently require operators of catcher vessels or catcher/processor vessels using longline gear to report the bird avoidance gear deployed using bird avoidance gear codes at Table 19 of part 679. Because this proposed rule would revise the required seabird avoidance measures, the seabird avoidance codes at Table 19 of part 679 would be revised to reflect these changes.

Proposed Seabird Avoidance Plan

NMFS proposes a Seabird Avoidance Plan that would be written and onboard the vessel and would contain the following information: (1) Vessel name, (2) Master's name, (3) Type of bird avoidance measures utilized, (4) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear, (5) Instructions/Diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards, and (5) Procedures for strategic discharge of offal, if any. The Seabird Avoidance Plan would be prepared and signed by vessel operator. The vessel operator's signature would indicate the operator had read the plan, reviewed it with the vessel crew, made it available to the crew, and instructed vessel crew to read it. The Seabird Avoidance plan must be made available for inspection upon request by an authorized officer (USCG boarding officer, NMFS Enforcement Officer or other designated official) or an observer.

The objective of the Seabird Avoidance Plan is to ensure that vessel operators are aware of the issue of seabird incidental take and have developed an effective plan for using the required measures on their vessels to avoid and reduce any seabird incidental take.

All seabirds from the observer-sampled portions of hauls using hook-and-line gear would be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls. The purpose of this proposed requirement is to assure that incidentally taken birds are accurately accounted for in observer reports.

Use of Multiple Seabird Avoidance Measures

Many sources acknowledge that using seabird avoidance measures in combination may be more effective in reducing incidental take. NMFS regulations for Alaska have reflected this multi-use concept. One example would be measures to sink baited gear quickly (line weighting), used in conjunction with surface deterrents (e.g. streamer lines, buoy bag lines) that are designed to prevent seabirds from accessing areas where baited hooks may be temporarily available. Current regulations allow for night-setting and use of a lining tube (device that deploys hook-and-line gear below the water's surface) as sole seabird avoidance measures. Tests conducted in the WSGP research study indicate that the incidental catch of fulmars and the

attack rate of Laysan albatrosses actually increased during night-time sets. Similarly, the use of a line shooter (hydraulic device designed to set lines at a speed slightly faster than the vessel's speed during setting) in the 1999 Pacific cod fishery was the only deterrent that significantly increased the rate of seabird incidental catch. Because lining tube performance was variable and limited by a number of factors, and because the device is costly and inappropriate for some vessels, the lining tube was not recommended to be used as a sole seabird avoidance measure. Therefore, under this proposed rule these three measures or methods (night-setting, line shooter, lining tube) would not be allowed for use as sole seabird avoidance measures and if used, must be accompanied by an additional required seabird avoidance measure.

Applicability of Seabird Avoidance Regulations While Fishing for CDQ Halibut

Paragraphs § 679.32(f)(2)(v) and § 679.42(b)(2) would require use of seabird avoidance measures on all vessels of a specified length that are fishing in U.S. Convention waters off Alaska for Pacific halibut, whether the vessels are engaged in IFQ fisheries or CDQ fisheries. At the time the seabird avoidance measures were required in the Pacific halibut fishery (63 FR 11161, March 6, 1998), the fixed gear halibut CDQ allocations were managed as part of the IFQ program and implementing regulations were codified at Part 679 Subpart D (§ 679.40). In 1999, regulations governing halibut CDQ fishing were revised to clarify which elements of the halibut IFQ regulations applied to the halibut CDQ fishery (64 FR 20210 April 26, 1999). These regulations are found at § 679.30 and inadvertently did not include reference to the seabird avoidance gear and methods requirements.

Paragraph § 679.32(f)(2)(v) would be amended by adding the phrase ''and seabird avoidance requirements at § 679.42(b)(2)'' so that it reads as follows: ''The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f) and seabird avoidance requirements at § 679.42(b)(2)''.

Paragraph § 679.42(b)(2) would be amended by adding the phrase ''CDQ halibut'' so that it reads as follows: ''Seabird avoidance gear and methods. The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).''

Proposed Definitions at § 679.2

Definitions are proposed at § 679.2 for two previously undefined terms: ''snap gear'' (as a type of ''authorized fishing gear'') and ''seabird.'' These proposed definitions pertain specifically to seabirds incidentally taken during fishing operations using hook-and-line gear and are necessary for the clarity of the proposed regulations for seabird avoidance measures.

Proposed Respecification of Paragraphs at § 679.24(e)

Seabird avoidance requirements currently in § 679.24 (e)(2)(i), (ii), and (iii) would be redesignated as paragraphs (e)(2)(iv), (e)(2)(v)(A), and (e)(2)(vi). These requirements will be retained and call for operators of specified vessels to conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; and (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

Classification

At this time, NMFS has not determined that the regulatory amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Most catcher vessels and some catcher/processors harvesting groundfish and halibut off Alaska meet the definition of a small entity under the Regulatory Flexibility Act (RFA). In 2000, the total number of catcher vessels and catcher/processors using hook-and-line gear that caught groundfish off Alaska was 1,004 and 44, respectively. These numbers account for the vessels that operated in both the BSAI and GOA. Of these, approximately 1,006 would be subject to the revised seabird avoidance measures and would be considered to be small entities. In 2000, 1,694 vessels landed halibut from U.S. Convention waters off Alaska, and approximately 1,294 vessels landing halibut would be subject to the revised seabird measures (and assumed to be ''small'' under RFA criteria).

To the extent that any of these vessels are partners with CDQ groups, the proposed rule could indirectly impact the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups and the communities they represent all are small entities under the RFA. To the degree that CDQ vessels can pass along costs to CDQ groups, this would reduce the direct impact on the vessels themselves, but only by redistributing these impacts among the broader universe of ''small entities''.

Under the proposed rule, the measures required of all applicable vessels over 26 ft (7.9 m) LOA would be expected to be of minimal cost. A bird streamer line is estimated to cost $50 to $250 and line weights represent a variable cost depending upon the necessary amount of weights to sink the baited hooks. Procedural or operational changes may be required in fishing operations.

The incidental take limit for short-tailed albatrosses could be exceeded during longline fishing operations. If the regulatory revisions under the proposed rule improve and strengthen the current seabird avoidance measures, then the likelihood of encountering and taking a short-tailed albatross would be reduced. Therefore, the likelihood of a fishery closure and its ensuing economic impacts would be reduced. If the anticipated take of short-tailed albatrosses was exceeded in either the groundfish fishery or the halibut fishery, the actual economic impacts resulting from a modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses would depend upon the revised measures, which could range from measures proposed in this rule to closures. The economic impact of fishery closures would depend upon the length of time of the closed period and the extent of the closure. The 1999 exvessel value of the Pacific cod fishery for hook-and-line gear was estimated at approximately $72 million, approximately $71 million for the sablefish fishery, and totaled approximately $150 million for all groundfish species caught with hook-and-line gear. The 2000 exvessel value of the Pacific halibut fishery was estimated at $67 million. Such

economic impacts on small entities could result in a substantial reduction in annual gross revenues and could, therefore, potentially have a significant adverse economic impact on a substantial number of small entities. Data are currently not available upon which to draw net revenue conclusions about these probable effects.

The Council considered recommending performance standards for seabird avoidance measures used on vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA. Until further information becomes available, performance standards for these smaller vessels are suggested only as guidelines at this time.

Alternatives to the proposed seabird avoidance measures were also considered. The status quo alternative, while posing no additional burden on small entities, would not alter the operations of the hook-and-line fisheries in ways that would significantly reduce the potential for the incidental take of seabirds. The second alternative to the proposed action is based on the Councils recommendation for revisions to seabird avoidance measures in 1999. Those recommendations would have revised existing regulations to require weighted groundlines, the deployment of bird scaring lines when a lining tube was used for the deployment of gear at depth, and an exemption for small vessels (<35 ft (10.7 m)). The proposed seabird avoidance measures are preferred to this second alternative because they specifically address performance and material standards for bird scaring lines, which the second alternative does not. The correct design and deployment of bird scaring lines are known to improve the effectiveness of these seabird avoidance devices. The third alternative to the preferred includes revisions to the existing regulations, based on recommendations from a two-year research study conducted by the WSGP on the effectiveness of seabird avoidance measures and includes all of the measures of the proposed alternative, except that there is no consideration for smaller vessels. Consequently, the third alternative would not mitigate the impacts on small entities. The improvements made to the existing seabird avoidance measures are expected to be much greater under the proposed action than with any of the other alternatives that were considered and evaluated.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement for a Seabird Avoidance Plan has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 8 hours 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. The following information would be collected from vessel operators: type of seabird avoidance measure used; description of each crew station's function for all tasks related to deploying, adjusting, and monitoring the performance of deployed seabird avoidance measures; diagrams and/or descriptions of the sequence of actions taken by the crew to deploy and retrieve the seabird avoidance measures.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

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

A copy of the EA/RIR/IRFA can be obtained from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 31, 2003.

Rebecca Lent,

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

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2 the definition for ''snap gear'' under ''authorized fishing gear'' is added and the definition for ''seabird'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

*Authorized fishing gear** * *

(17) *Snap gear* means a type of hook-and-line gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

* * * * *

Seabird means those bird species that habitually obtain their food from the sea below the low water mark.

* * * * *

3. In § 679.24, paragraph (e) is revised as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance program for vessels fishing with hook-and-line gear*—(1) *Applicability.* The operator of a vessel that is longer than 26 ft (7.9 m) LOA fishing with hook-and-line gear must comply with the seabird avoidance requirements as specified in paragraphs (e)(2) through (e)(4) of this section while fishing for:

(i) IFQ halibut or CDQ halibut,

(ii) IFQ sablefish, and

(iii) Groundfish in the EEZ off Alaska.

(2) *Seabird Avoidance Requirements.* The operator of a vessel described in paragraph (e)(1) of this section must:

(i) *Gear onboard.* Have onboard the vessel the seabird avoidance gear as specified in paragraph (e)(4) of this section;

(ii) *Gear inspection.* Upon request by an authorized officer or observer, make the seabird avoidance gear available for inspection;

(iii) *Gear use.* Use seabird avoidance gear as specified in paragraph (e)(4) of this section that meets performance and material standards as specified in paragraph (e)(5) of this section, while hook-and-line gear is being deployed.

(iv) *Sink baited hooks.* Use hooks that when baited, sink as soon as they are put in the water.

(v) *Offal discharge.* (A) If offal is discharged while gear is being set or hauled, discharge offal in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge

site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

(B) Remove hooks from any offal that is discharged.

(C) Eliminate directed discharge through chutes or pipes of residual bait or offal from the stern of the vessel while setting gear. This does not include baits falling off the hook or offal discharges from other locations that parallel the gear and subsequently drift into the wake zone well aft of the vessel.

(D) For vessels not deploying gear from the stern, eliminate directed discharge of residual bait or offal over sinking hook-and-line gear while gear is being deployed.

(vi) *Safe release of seabirds.* Make every reasonable effort to ensure birds brought on board alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the birds.

(3) *Seabird Avoidance Plan.* A Seabird Avoidance Plan must:

(i) Be written, current, and onboard the vessel.

(ii) Contain the following information:

(A) Vessel Name.

(B) Master's Name.

(C) Type of bird avoidance measures utilized.

(D) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear.

(E) Instructions and/or diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards.

(F) Procedures for strategic discharge of offal, if any.

(G) The NMFS ''Seabird Avoidance Plan'' form completed and signed by vessel operator. Vessel operator's signature shall indicate the operator has read the plan, reviewed it with the vessel crew, made it available to the crew, and has instructed the vessel crew to read it.

(iii) Be made available for inspection upon request by an authorized officer or observer.

(4) *Seabird Avoidance Gear Requirements.* (also see Table 20 of this part.) The operator of a vessel identified in paragraph (e)(1) of this section must comply with the following requirements:

(i) While fishing with hook-and-line gear other than snap gear in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District), or state waters of Cook Inlet:

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section must be used by vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(D) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(ii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(ii) While fishing with hook-and-line gear other than snap gear in Federal waters (EEZ) not including NMFS Area 659.

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of paired streamer lines of a standard as specified in paragraph (e)(5)(iii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(iii) While fishing with snap gear. (A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(iv)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(iv) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater 55 ft (16.8 m) LOA with masts, poles, or rigging.

(5) *Seabird Avoidance Gear Performance and Material Standards.* (i) Buoy Bag Line Weather Exception—In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a buoy bag line is discretionary.

(ii) *Single Streamer Standard.* (A) A single streamer line must:

(*1*) Be a minimum of 300 feet (91.4 m) in length;

(*2*) Have streamers spaced every 16.4 ft (5 m);

(*3*) Be deployed before the first hook is set in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(*4*) Have individual streamers that hang attached to the mainline to 9.8 in (0.25 m) above the waterline in the absence of wind.

(*5*) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(iii) *Paired Streamer Standard.* (A) At least one streamer line must be deployed before the first hook is set and two streamer lines must be fully deployed within 90 seconds.

(B) *Weather Exceptions.* In conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), a single streamer must be deployed from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of paired streamer lines is discretionary.

(C) Streamer lines must. (*1*) Be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over;

(*2*) Be a minimum of 300 feet (91.4 m) in length;

(*3*) Have streamers spaced every 16.4 ft (5 m);

(*4*) For vessels deploying hook-and-line gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(*5*) For vessels deploying gear from the side, the streamer lines must be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

(*6*) Have individual streamers that hang attached to the mainline to 9.8 in

(0.25 m) above the waterline in the absence of wind.

(*7*) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(iv) *Snap Gear Streamer Standard.* (A) For vessels using snap gear, a single streamer line must:

(*1*) Be deployed before the first hook is set in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(*2*) Have a minimum length of 147.6 ft (45 m).

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(6) *Other Seabird Avoidance Devices and Methods* as required at paragraphs (e)(4)(ii)(A) and (B) and (e)(4)(iii) of this section include the following:

(i) Add weights to groundline.

(ii) Use a buoy bag line or single streamer line, of standards as appropriate and as specified in paragraph (e)(5) of this section.

(iii) Strategic offal discharge to distract birds away from the setting of baited hooks. Discharge fish, fish parts (i.e. offal) or spent bait.

(7) *Other methods.* The following measures or methods must be accompanied by the applicable seabird avoidance gear requirements as specified in paragraph (e)(4) of this section:

(i) Night-setting,

(ii) Line shooter, or

(iii) Lining tube.

(8) *Seabird Avoidance Exemption.* Nothwithstanding any other paragraph in this part, operators of vessels 32 ft (9.8 m) LOA or less using hook-and-line gear in IPHC Area 4E in waters shoreward of the EEZ are exempt from seabird avoidance regulations.

4. In § 679.32, paragraph (f)(2)(vi) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) * * *

(2) * * *

(vi) The CDQ group, and vessel owner or operator must comply with all of the seabird avoidance requirements at § 679.42(b)(2).

* * * * *

5. In § 679.42, paragraph (b)(2) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

6. In § 679.50, paragraph (f)(1)(viii)(F) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(f) * * *

(1) * * *

(viii) * * *

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

* * * * *

7. In part 679, table 19 is revised and table 20 to part 679 is added to read as follows:

BILLING CODE 3510–22–S

Table 19 to Part 679. Seabird Avoidance Gear Codes

VESSEL LOGBOOK	
CODE	**SEABIRD AVOIDANCE GEAR OR METHOD.**
1	Paired Streamer Lines: Used during deployment of hook-and-line gear to prevent birds from taking hooks. Two streamer lines used, one on each side of the main groundline. Each streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iii).
2	Single Streamer Line: Used during deployment of hook-and-line gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(ii).
3	Single Streamer Line, used with Snap Gear: Used during the deployment of snap gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iv).
4	Buoy Bag Line: Used during the deployment of hook-and-line gear to prevent birds from taking hooks. A buoy bag line consists of two components: a length of line (without streamers attached) and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(i).
Other Device used in conjunction with Single Streamer Line or Buoy Bag Line.	
5	Add weights to groundline: Applying weights to the groundline for the purpose of sinking the hook-and-line gear more quickly and preventing seabirds from accessing the baited hooks.
6	Additional Buoy Bag Line or Single Streamer Line: Using a second buoy bag line or streamer line for the purpose of enhancing the effectiveness of these deterrent devices at preventing seabirds from accessing baited hooks.
7	Strategic Offal Discharge: Discharging fish, fish parts (i.e. offal) or spent bait for the purpose of distracting seabirds away from the main groundline while setting gear.
Additional Device Used.	
8	Night Fishing: Setting hook-and-line gear during dark (night time hours).

	Line Shooter: A hydraulic device designed to deploy hook-and-line gear at a speed slightly faster than the vessel's speed during setting.
	Lining Tube: A device used to deploy hook-and-line gear through an underwater-setting device.
	Other (Describe)
9	**No Deterrent Used Due to Weather**. [See weather exceptions at § 679.24(e)(5)(i)(B), (e)(5)(ii)(B), (e)(5)(iii)(B), (e)(5)(iv)(B).]
0	**No Deterrent Used**.

Table 20 to Part 679. Seabird Avoidance Gear Requirements for Vessels, based on Area, Gear, and Vessel Type.

If you operate a vessel deploying hook-and-line gear, other than snap gear, in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District) or state waters of Cook Inlet, and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 32 ft LOA	minimum of one buoy bag line
>32 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(ii)
If you operate a vessel deploying hook-and-line gear, other than snap gear, in the EEZ (not including Area 659), and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)
Except for vessels operating in state waters of IPHC Area 4E, if you operate a vessel deploying hook-and-line gear, and it is snap gear, and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device[1]
If you operate a vessel deploying hook-and-line gear, other than snap gear, in IPHC Area 4E (not including state waters), and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**

>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)

[1]other device = weights added to groundline, another buoy bag line or single streamer line, or strategic offal discharge [see § 679.24(e)(6) for more details]

[FR Doc. 03–2805 Filed 2–6–03; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 68, No. 26
Friday, February 7, 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

Sunshine Act Meeting

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, February 13, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Broadband Loan Program.
2. Privatization issues.
3. Administrative issues.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Friday, February 14, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on minutes of the November 14, 2002, and January 8, 2003, board meetings.
3. Secretary's report on loans approved in first quarter, FY 2003.
4. Treasurer's report.
5. Presentation of final report on privatization.
6. Discussion of privatization of the Rural Telephone Bank.
7. Governor's remarks.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: February 5, 2003.

Curtis M. Anderson,

Deputy Governor, Acting as Governor, Rural Telephone Bank.

[FR Doc. 03–3253 Filed 2–5–03; 1:11 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart A, ''Community Facility Loans.''

DATES: Comments on this notice must be received by April 8, 2003, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: For program content, contact Derek L. Jones, Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Expiration Date of Approval: June 30, 2003.

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

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes.

Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.8 hours per response.

Respondents: Public bodies, not for profits, or Indian tribes.

Estimated Number of Respondents: 3,231.

Estimated Number of Responses per Respondent: 10.3.

Estimated Total Annual Burden on Respondents: 61,076 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' 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 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. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural

Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 3, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: January 27, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: January 29, 2003.

Hilda Legg,

Administrator, Rural Utilities Service.

Dated: January 30, 2003.

Verle E. Lanier,

Acting Administrator, Farm Service Agency.

[FR Doc. 03–3044 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Project; Manti-La Sal National Forest, Emery and Sanpete Counties, UT

AGENCY: Forest Service, USDA;

ACTION: Notice of intent to prepare Environmental Impact Statement.

Authority: The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); Council on Environmental quality Regulations, title 40, Code of Federal Regulations, parts 1500–1508 (40 CFR parts 1500–1508); and U.S. Department of Agriculture NEPA Regulations, part 1b (7 CFR part 1b).

SUMMARY: Epidemic populations of spruce beetle are found on the Wasatch Plateau. Many susceptible spruce-fir stands have been infested, and it is anticipated that many more will soon be infested with spruce beetle populations. The beetle populations could collapse due to natural factors, but at this time the populations remain viable and continue to spread. Scattered 3–5 tree pockets of spruce beetle caused mortality are present in the Lake project analysis area and if the current level of beetle activity continues without check, it is probable that most of the spruce-fir component on the Wasatch Plateau would be lost. The beetles have already caused severe impacts on several thousand acres of spruce-fir stands adjacent to and south of the analysis area. As a consequence, most spruce trees over eight inches in diameter in the area to the south are dead or dying, and in some areas nearly all spruce are dead as a result of the beetle epidemic. The insects are continuing to move in a northward direction and it is anticipated they will continue to invade, infest, and kill most of the spruce trees eight inches and larger in diameter throughout this analysis area, as was the case in the adjacent spruce-fir stands to the south. The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage dead, insect infested and dying trees, commercially thin live high risk trees, manage natural and prescribed burning, and restock some stands of trees located in the Spring, and the north and south forks of Lake Canyon drainages within the project analysis area. The project area is located on public lands administered by the Ferron/Price Ranger District approximately 20 miles northwest of Huntington, Utah. It is bordered on the north by State highway 31 located in Huntington Canyon, on the west by Skyline Drive, Forest Service Road 50150, on the east by the Millers Flat road, Forest Service Road 50014, and on the south at the ridge between South Fork Lake and Rolfson canyons.

The need for the proposal is to:

- Restore and maintain composition, structure, and diversity by providing for tree species and stand density levels that are lower in stocking and more diverse;
- Facilitate rapid reestablishment of Engelmann spruce through replanting of spruce;
- Enhance the aspen communities that are being lost due to conifer invasion/encroachment and lack of natural fire;
- Contribute to a timber resource supply that helps meet National demand for forest products and recover some of the economic loss of the resource from the dead, dying, insect infested and high-risk green trees;
- Improve public safety by removing hazard trees from roadsides and from dispersed camping areas within the project area.

Portions of the Rolfson-Staker Inventoried Roadless Area are located within the analysis area but are not included in the Proposed Action. The No Action is one alternative that will be considered. Additional alternatives will be formulated based on public issues, and response analysis.

The proposed action involves harvesting/salvaging approximately 3.7 MMBF (Million Board Feet) of dead, dying, insect infested and high-risk green trees from approximately 820 acres within an analysis area of about 5,600 acres. Harvest of trees would be by both aerial (helicopter) and ground based (tractor) methods. Helicopter logging would be used to access approximately 500 acres, and tractor logging would be used to access approximately 320 acres. Approximately 135 acres are proposed for artificial reforestation (hand planting of seedlings) and 145 acres would be open to natural regeneration. Approximately 80 acres of aspen stands would be regenerated by removal of aspen and competing conifer species in clear-cut patches up to 10 acres in size. Other aspen stands would be enhanced by removing conifer trees from within and adjacent to the stands. Approximately 145 acres will be broadcast burned. Road work anticipated includes approximately: 2.1 miles of road reconstruction, 0.8 mile of new road construction and use of approximately 0.25 miles of temporary road. After the project is completed, approximately 2.8 miles of existing Forest Service Roads are proposed to remain open and be maintained. Approximately four temporary helicopter landing one acre in size and eleven temporary tractor landings of ¼ acre in size would be needed during the logging operation. The proposed action does not include road construction, reconstruction, or logging in the inventoried roadless area.

DATES: Written comments concerning the scope of the analysis described in this notice should be received within 30 days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Alan Lucas, Forester, Manti-La Sal National Forest, phone (435) 636–3328.

SUPPLEMENTARY INFORMATION: This project was previously proposed in the spring of 2001, with a Notice of Intent to Prepare an Environmental Impact Statement published on May 4, 2001 (**Federal Register**/Vol. 66, No. 87, pages 22513–22514). The original purpose of need, and proposed actions have been modified to respond to new information. This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition

for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Services invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**.

The Ferron/Price Ranger District of the Manti-La Sal National Forest in Emery and Sanpete Counties in the state of Utah would administer the proposed management activities for this analysis. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process, the next 30 days following publication of this notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

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 it is important to give reviewers notice at this early stage 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 reviewers' position and intentions.

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 Circuit, 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 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, 40 CFR 1503.3 in addressing these points.

The final release of the EIS is projected to be September 12, 2003. The Forest Supervisor for the Manti-La Sal National Forest is the responsible official for the EIS. After considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies a decision by this official will be made regarding the proposal. The reasons for the decision will be documented in a Record of Decision. The Forest Supervisor's office of the Manti-La Sal National Forest is located at 599 West Price River Drive, Price, Utah 84501, phone: 435–637–2817.

Dated: January 13, 2003.

Elaine J. Zieroth,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 03–3104 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Washington County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington County Resource Advisory Committee (RAC) will meet on February 26, 2003 in Pomeroy, Washington. The purpose of the meeting is to discuss the final selection of Title II projects for Fiscal Year 2003 under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 26, 2003 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Pomeroy Ranger District Office, 71 West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on discussing Title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 31, 2003.

Monte Fujishin,

Designated Forest Official.

[FR Doc. 03–2997 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on February 10, 2003, in Dayton, Washington. The purpose of the meeting is to discuss the final selection of title II projects for Fiscal Year 2003 under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 10, 2003, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Dayton Post Office, 202 South Second Street, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on discussing title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will

have the opportunity to address the committee at that time.

Dated: January 31, 2003.

Monte Fujishin,

Designated Forest Official.

[FR Doc. 03–2998 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–BH–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the procurement list products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the procurement list. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to procurement list for production by the nonprofit agencies listed:

Products

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0626, Level 1, T-Shirt,
8415–00–NSH–0627, Level 1, Boxer,
8415–00–NSH–0628, Level 1, Long Sleeve Shirt,
8415–00–NSH–0629, Level 1, Pant,
8415–00–NSH–0630, Level 2, Long Sleeve Shirt,
8415–00–NSH–0631, Level 2, Pant.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0632, Level 3, Jacket.
NPA: Southside Training Employment Placement Services, Inc., Victoria, Virginia.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0659, Level 4, Windshirt,
8415–00–NSH–0633, Level 5, Soft-shell Jacket,
8415–00–NSH–0634, Level 5, Soft-shell Pant,
8415–00–NSH–0635, Level 6, Wet Weather Jacket,
8415–00–NSH–0636, Level 6, Wet Weather Pant.
NPA: ORC Industries, Inc., La Crosse, Wisconsin.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0637, Level 7, Pant,
8415–00–NSH–0638, Level 7, Vest,
8415–00–NSH–0690, Level 7, Jacket.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services

Service Type/Location: CD–ROM Replication, GPO Program 5545–S; Government Printing Office, Chicago, Illinois.
NPA: Assoc. for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contract Activity: Government Printing Office, Chicago, Illinois.
Service Type/Location: Industrial Supply Store Prime Vendor; Anniston Army Depot, Anniston, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contract Activity: Anniston Army Depot, Anniston, Alabama.
Service Type/Location: Janitorial/Custodial; Area Maintenance Support Activity (AMSA) #110; New Castle, Pennsylvania.
NPA: Lark Enterprises, Inc., New Castle, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/Custodial; DuPage Air Traffic Control Tower, West Chicago, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Paint Prime Vendor; Anniston Army Depot, Anniston, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contract Activity: Anniston Army Depot, Anniston, Alabama.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–3072 Filed 2–6–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 12, 2003; 1 p.m.–4 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will

relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: February 4, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–3183 Filed 2–5–03; 11:49 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–801, A-428–801,[A-475–801, A-559–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, and Singapore: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent To Revoke Order In Part

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent to Revoke Order in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, and Singapore. The merchandise covered by these orders are ball bearings and parts thereof. The reviews cover nine manufacturers/exporters. The period of review is May 1, 2001, through April 30, 2002.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Please contact the appropriate case analysts for the various respondent firms, as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Minoo Hatten (SNR Roulements), Dunyako Ahmadu (SKF), Mark Ross, or Richard Rimlinger.

Germany

Dunyako Ahmadu (FAG), Sochieta Moth (SKF), Catherine Cartsos (Paul Mueller), Jeffrey Frank (Torrington), Mark Ross, or Richard Rimlinger.

Italy

Fred Aziz (FAG), Janis Kalnins (SKF), Mark Ross, or Richard Rimlinger.

Singapore

Yang Jin Chun (NMB/Pelmec) or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published in the **Federal Register** the antidumping duty orders on ball bearings and parts thereof (BBs) from France (54 FR 20902), Germany (54 FR 20900), Italy (54 FR 20903), and Singapore (54 FR 20907). On June 25, 2002, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (67 FR 42753).

On October 23, 2002, the Department rescinded the following administrative reviews: INA-Schaeffler KG (INA) and Sachs Handel GmbH and ZF Sachs (collectively Sachs) with respect to ball bearings from Germany; SKF France S.A. with respect to spherical plain bearings from France; Barden Corporation (U.K.) Ltd., with respect to ball bearings from the United Kingdom. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al: Partial and Full Rescission of Antidumping Duty Administrative Reviews*, 67 FR 65089 (Oct. 23, 2002).

Subsequent to the publication of our rescission notice, we received withdrawals of the requests we had received for reviews of Ringball Corporation (France, Germany, and Italy) with respect to BBs. Because there were no other requests for review of the above-named firm and no other interested party objected, we are rescinding the reviews with respect to this company in accordance with 19 CFR 351.213(d).

Scope of Reviews

The products covered by these reviews are ball bearings and parts thereof (BBs). These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a listing of scope determinations which pertain to the orders, see the Scope Determinations Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002, and hereby adopted by this notice. The Scope Memorandum is on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099, in the General Issues record (A-100–001) for the 01/02 reviews.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these proceedings remain dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU, Room B-099. We will also be verifying certain companies (SKF France, SKF Germany, and SNR) shortly after

publication of these preliminary results of reviews.

Use of Facts Available

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Torrington Nadellager. The firm did not respond to our antidumping questionnaire and, consequently, we find that it has not provided ''information that has been requested by the administering authority'' under section 776(a)(1) of the Act.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is appropriate because Torrington Nadellager has not acted to the best of its ability in providing us with relevant information which is under its control. As adverse facts available for this firm, we have applied the highest rate we have calculated for any company under review in any segment of the relevant proceedings on BBs from Germany. We have selected this rate because it is sufficiently high as to reasonably assure that Torrington Nadellager does not obtain a more favorable result by failing to cooperate. Specifically, this rate is 70.41 percent.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that the word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996) (*Tapered Roller Bearings and Parts Thereof from Japan*), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

We find that the 70.41 percent rate which we are using for these preliminary results does have probative value. We compared the selected margins to margins calculated on individual sales of the merchandise in question made by German companies covered by the instant review. We found a substantial number of sales, made in the ordinary course of trade and in commercial quantities, with dumping margins near or exceeding the rate under consideration. The details of this analysis are contained in the analysis memorandum for Torrington Nadellager dated January 31, 2003. This evidence supports an inference that the selected rate reflects the actual dumping margin for the firm in question.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total adverse facts-available rate for the company in question. On the contrary, our existing record supports the use of this rate as the best indication of the export price and dumping margin for this firm as explained in our January 31, 2003, memorandum. Therefore, we consider the selected rate to have probative value with respect to the firm in question in this review and to reflect the appropriate adverse inference.

Intent to Revoke

On May 31, 2002, Paul Mueller requested the revocation of the order covering BBs from Germany as it pertains to its sales of these bearings.

Under section 751 of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under subsection 351.222(b), the Department may revoke an antidumping duty order in part if it concludes that: (i) An exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years; (ii) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and (iii) the continued application of the antidumping duty order is no longer necessary to offset dumping. Subsection 351.222(b)(3) states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under subsection 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1).

We preliminarily determine that the request from Paul Mueller meets all of the criteria under 19 CFR 351.222(e)(1). With regard to the criteria of subsection

351.222(b)(2), our preliminary margin calculations show that this firm sold BBs at not less than normal value during the current review period. See dumping margins below. In addition, it sold BBs at not less than normal value in the two previous administrative reviews in which it was involved. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219 (Aug. 11, 2000), covering the period May 1, 1998, through April 30, 1999, and *Ball Bearings and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 67 FR 55780 (Aug. 30, 2002), covering the period May 1, 2000, through April 30, 2001. Based on our examination of the sales data submitted by Paul Mueller, we preliminarily determine that Paul Mueller sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Paul Mueller to support its request for revocation, including the intervening unreviewed years. See preliminary results calculation memorandum for Paul Mueller, dated January 31, 2003, which is in the Department's CRU, Room B-099. Thus, we preliminarily find that Paul Mueller had zero or *de minimis* dumping margins for its last three administrative reviews and sold in commercial quantities in all years, including the unreviewed intervening years. Also, we preliminarily determine that application of the antidumping order to Paul Mueller is no longer warranted for the following reasons: (1) the company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than fair value; and (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Paul Mueller qualifies for revocation of the order on BBs pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Paul Mueller should be revoked.

If these preliminary findings are affirmed in our final results, we will revoke this order in part for Paul Mueller and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after May 1, 2002, and will instruct Customs to refund any cash deposits for such entries.

Export Price and Constructed Export Price

For the price to the United States, we used export price or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 10,000 CEP sales transactions to the United States of merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 27 June 2, 2001; August 19 25, 2001; September 16 22, 2001; December 2 8, 2001; February 17 23, 2002; and March 24 30, 2002. We reviewed all export-price sales transactions made during the period of review.

We calculated export price and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, indirect selling expenses, and U.S. repacking expenses. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act. See below. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. See 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that for all firms the value added is likely to exceed substantially the value of the subject merchandise. Also, for those companies, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. See analysis memoranda for SKF France, SKF Germany, SKF Italy, FAG Germany, Paul Mueller, and NMB/Pelmec dated January 31, 2003. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to export price or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a

proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

Due to the extremely large number of transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 10,000 home-market sales transactions on a country-specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in the month prior to the period of review, and sales in the month following the period of review. The sample months were April, May, August, September, and December of 2001, and February, March, and June of 2002.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because we disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review with respect to ball bearings sold by SNR, SKF France, SKF Italy, Paul Mueller, and SKF Germany (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219, 49221 (Aug. 11, 2000), or *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Administrative Reviews and Revocation of Orders in Part*, 67 FR 55780, 55781 (Aug. 30, 2002)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above-mentioned companies.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP calculations.

With respect to adjustments for differences in payment terms and for inventory credit expenses, Paul Mueller claimed that it did not have any short-term borrowings in the United States upon which to base a short-term borrowing rate and used a prime lending rate. The record indicates, however, that a wholly owned subsidiary of Paul Mueller did have a short-term borrowing rate in the United States and we used this rate to calculate credit for all U.S. sales made by Paul Mueller. See analysis memorandum for Paul Mueller dated January 31, 2003.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. See *Level of Trade* section below.

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for circumstances-of-sale differences and level-of-trade differences. For comparisons to export price, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. See *Level of Trade* section below.

We found that NMB/Pelmec reported a small number of U.S. models for which it did not report CV data. We will obtain additional information to allow us to consider these transactions for our final results of administrative review. See analysis memorandum for NMB/Pelmec dated January 31, 2003.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team Regarding Level of Trade, dated January 31, 2003, on file in the CRU, Room B-099.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the following percentage weighted-average dumping margins on BBs for the period May 1, 2001, through April 30, 2002:

FRANCE

Company	Margin
SNR Roulements	3.49
SKF	5.68

GERMANY

Company	Margin
FAG	1.44
Torrington	70.41
Paul Mueller	0.19
SKF	3.20

ITALY

Company	Margin
FAG	2.86
SKF	5.10

SINGAPORE

Company	Margin
NMB/Pelmec	1.62

Comments

Any interested party may request a hearing within 21 days of the date of publication of this notice. A general-issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held at the main Commerce Department building at a time and location to be determined.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

Case	Briefs Due	Rebuttals Due
General Issues	March 17, 2003	March 24, 2003
France	March 18, 2003	March 25, 2003
Germany	March 19, 2003	March 26, 2003
Italy	March 20, 2003	March 27, 2003
Singapore	March 21, 2003	March 28, 2003

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for subject merchandise.

Export-Price Sales

With respect to export-price sales, for these preliminary results we divided the total dumping margins (calculated as the difference between normal value and export price) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(a).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period. In order to derive a single weighted-average margin for each respondent, we weight-averaged the export-price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (Jul. 26, 1993). For BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (Dec. 17, 1996). These rates are the ''All Others'' rates from the relevant less-than-fair-value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2003.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–3090 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty (AD) order on carbon steel butt-weld pipe fittings from Thailand. This review covers one foreign producer/exporter, Thai Benkan Company, Ltd. (TBC). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''*Final Results of the Review.*''

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published the preliminary results of the administrative review of the AD order on carbon steel butt-weld pipe fittings from Thailand. *See Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 51178 (August 7, 2002) (*Preliminary Results*). The POR is July 1, 2000, through June 30, 2001; the is TBC. We conducted verification of the information submitted on the record by TBC and issued our verification report on December 9, 2002. We invited parties to comment on our preliminary results of review. On December 20, 2002, we received TBC's case brief. On January 3, 2003, we received rebuttal comments from Tube Forgings of America, Inc., one of the original petitioners in the less-than-fair-value (LTFV) investigation. No interested party requested a public hearing in this proceeding.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of final review results if it determines that it is not practicable to complete the review within the statutory time limit. On December 3, 2002, the Department fully extended the time limit for the final results of this case to February 3, 2003 (*see Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review,* 67 FR 71935).

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, during the week of October 28 through November 1, 2002, we conducted verification of the information provided by TBC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memorandum ''Verification of the Sales Questionnaire Responses of Thai Benkan Corp., and Benkan America, Inc.—Carbon Steel Butt-Weld Pipe Fittings from Thailand—Administrative Review (2000–2001)'' from Tom Futtner, Program Manager to The File, dated December 9, 2002, the public version of which is on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU–Public File).

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Because the home market sales information submitted by TBC could not be verified, the Department applied total facts available pursuant to section 776(a)(2).

Section 782(d) of the Act provides that, if the Department determines that a respondent's response to a request for information does not comply with the request, the Department shall inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide the person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may draw an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Section 776(b)(4) states that adverse inferences may be based on information derived from the petition, the investigation or prior reviews, or any other information placed on the record.

We find that, in accordance with sections 776(a)(2)(D) and 776(b) of the Act, the use of facts available for TBC is appropriate in this instant review. As the record of this case indicates, the Department provided TBC with ample opportunity to prepare a correct and verifiable home market data set. Yet, despite numerous opportunities to provide the Department with a correct home market data set, at verification the Department discovered that TBC's information was flawed. Because TBC failed to provide a reconciliation of the reported home market sales' quantity and value to its financial statements, and its constructed value (CV) information was determined to be unreliable in the preliminary results, TBC's actions prevented the Department from establishing a reliable basis for normal value (NV) in this review. As such, the use of facts available in the final determination is warranted pursuant to section 776(a)(2)(D) of the Act.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an inference that is adverse to a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with requests for information. The Department applies adverse facts available ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103–316, vol. 1, at 870 (1994) (SAA).

To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b) of the Act, the Department considers, among other things, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela*, 67 FR 62119 (October 3, 2002) (*Steel Flat Products From Venezuela*), *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808 (October 16, 1997). In this case, TBC failed to cooperate to the best of its ability by not being adequately prepared for verification and not being able to reconcile its own home market data. Furthermore, TBC's inability to provide a reconcilable home market sales listing and its lack of preparedness for verification, has hindered the calculation of an accurate margin in this review.

It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. *See e.g.*, *Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review,* 67 FR 5789 (February 7, 2002) (''Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding * * * In this case, the highest margin from any segment of the proceeding is * * * the petition rate in the less-than-fair-value (LTFV) investigation''). Therefore, in the instant case, the Department is applying

the margin of 52.60 percent to TBC for these final results. This margin was derived from the AD petition used in the LTFV investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand,* 57 FR 21065 (May 18, 1992). *See also Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of the Antidumping Duty Administrative Review,* 62 FR 40797, 40803 (July 30, 1997) (*Review 1995–1896*).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' SAA at 870. The SAA further provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA, at 870). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

As part of the corroboration process, we examined the basis of the rates contained in the petition. The U.S. prices in the petition were based on publicly available prices from a Thai manufacturer selling in the United States. The normal value was based on CV. We reviewed the data submitted by the petitioner and the assumptions that petitioner made when calculating CV. The methodology was reasonable and was based on the data reasonably available to petitioner at the time. We also note that the same rate of 52.60 percent was applied as the best information available in the prior segment of this proceeding when another respondent failed to cooperate to the best of its ability. *See Review 1995–1896.* For purposes of this administrative review, we have reviewed the petition and the administrative record, and found no reason to believe that the reliability of this information should be called into question.

With respect to the relevance aspect of corroboration, however, the Department is required to consider information reasonably at its disposal to determine whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the selected margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was unusually high since it was based on another company's uncharacteristic business expense)).

The highest margin in the history of this proceeding is 52.60 percent from the petition in the original LTFV investigation. In this review, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, for the reasons stated above, we find that the 52.60 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, Group II, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in CRU-Public File. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Weighted-average margin (percent)
Thai Benkan Company, Ltd	52.60

Assessment Rate

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For the company for whom we applied facts available, we based the assessment rate on the facts available margin percentage. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 39.10 percent, the ''All Others'' rate which is based on the LTFV investigation (57 FR 21065, May 18, 1992). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum Thai Benkan Company, Ltd. (TBC)

1. Application of Adverse Facts Available
2. Indirect Selling Expense Ratio
3. CEP Profit Ratio

[FR Doc. 03–3087 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department initiated an administrative review of oil country tubular goods, other than drill pipe, from Korea for the period of review (POR) August 1, 2001, to July 31, 2002, in response to a timely request from SeAH Steel Corporation (SeAH) and for the period August 1, 2001, to July 31, 2002, in response to a timely request from Husteel Co., Ltd. (Husteel). SeAH and Husteel Co., Ltd., each the only party to request an administrative review of its respective sales, submitted timely withdrawals of requests for review. As such, the Department is rescinding this administrative review.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41057). On August 30, 2002, SeAH and Husteel each filed a timely request that the Department conduct an administrative review of its respective sales. No other parties requested a review of SeAH or Husteel. On September 25, 2002, the Department initiated an administrative review of SeAH and Husteel under the antidumping duty order on OCTG from Korea. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 60210 (September 25, 2002). In accordance with section 351.213(d)(1) of the regulations, Husteel timely withdrew its request for review on October 16, 2002 and SeAH timely withdrew its request for review on November 25, 2002.

Rescission of Review

Pursuant to our section 351.213(d)(1) of the regulations, the Department will rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Since the only parties that requested and administrative review timely withdrew their request for review, we are rescinding this administrative review for the period August 1, 2001, to July 31, 2002, for SeAH and for the period August 1, 2002, to July 31, 2002, for Husteel. The Department will issue appropriate assessment instructions to the U.S. Customs Service.

Dated: January 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3089 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 7, 2003.

SUMMARY: On October 28, 2002, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. *See Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Antidumping Duty Review,* 67 FR 65783 (October 28, 2002) (''*Initiation Notice*''). On December 17, 2002, the Department published the preliminary results of the changed circumstances review and preliminarily determined to revoke this order, in part, with respect to future entries of certain laminated tin-free steel described below, based on the fact that domestic parties have expressed no interest in continuation of the order with respect to these particular laminated tin-free steel products. *See Certain Tin Mill Products from Japan: Preliminary Results of Changed Circumstances Review,* 67 FR 77227 (December 17, 2002) (''*Preliminary Results*''). In our *Initiation Notice,* and our *Preliminary Results,* we gave interested parties an opportunity to comment; however, we did not receive any comments from domestic parties opposing the partial revocation of the order. Therefore, in our final results of the changed circumstances review, the Department hereby revokes this order with respect to all future entries for consumption of certain laminated tin-free steel, as described below.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's)

regulations are to the regulations at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000) (*TMP Order*). On September 6, 2002, Nippon Steel Corporation (''Nippon''), an exporter and manufacturer of the subject merchandise requested that the Department revoke, in part, the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

Nippon included letters from Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the tin-free laminated steel, as described above. On October 28, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel. *See Initiation Notice.* On October 29, 2002, Nippon filed a letter on behalf of Ohio Coatings Company stating their support for the exclusion of certain laminated tin-free steel. On December 17, 2002, the Department published the preliminary results of the changed circumstances review. *See Preliminary Results.* In the *Initiation Notice* and *Preliminary Results*, we indicated that interested parties could submit comments for consideration in the Department's preliminary and final results. We did not receive any comments following the *Preliminary Results.*

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- nor double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS-

A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of # 1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS-A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Final Results of Changed Circumstances Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked)* * * pertains have expressed a lack of interest in the order, in whole or in part * * *. '' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 14213, 14214 (March 24, 1999)).

No domestic producers of tin mill products have expressed opposition to the partial revocation of the tin mill products order following the *Initiation Notice* and the *Preliminary Results.* For these reasons, the Department is partially revoking the order on tin mill products from Japan with respect to all future entries for consumption of certain laminated tin-free steel which meets the specifications detailed above in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216. We will instruct the U.S. Customs Service not to assess antidumping duties on future entries of certain tin mill products (*i.e.*, laminated tin-free steel) meeting the specifications indicated above.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3088 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health—Bethesda, MD; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–048. *Applicant:* National Institutes of Health, Bethesda, MD 20892–0135. *Instrument:* (2) each Multi-Tasking Radiosynthesis Devices with Accessories. *Manufacturer:* Synthia Lab System Sweden AB, Sweden. *Intended Use:* See notice at 67 FR 77749, December 19, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides computer driven, robotically controlled modular reactors for producing more than 15 ^{11}C-labeled radiopharmaceutical compounds for research in human and primate brain chemistry and radiochemical compound development. The Lawrence Berkeley National Laboratory advised January 27, 2003, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–3082 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–052. *Applicant:* University of Chicago, 920 East 58th Street, Chicago, IL 60637. *Instrument:* Electron Microscope, Model Tecnai G^2 F30 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for research in the following areas:

1. Nanostructured Solids

Projects investigating metal, semiconductor, and biological nanocrystals, focusing both on the characterization of individual nanocrystals as well as on their self-assembly properties.

2. Nanostructured Polyumer Architectures

Projects aimed at elucidating the nanoscale phase separation and pattern formation of block copolymers, including novel conjugated copolymers. Also, the use of those copolymer structures as nano-templates and scaffolds for organic/inorganic composites.

3. Nanoscale Bio-Structures

Projects investigating the structure and formation of bio-fibers and bio-membranes, as well as their potential for novel materials applications.

Application accepted by Commissioner of Customs: December 27, 2002.

Docket Number: 03–001. *Applicant:* University of Missouri-Kansas City, School of Dentistry, 650 E. 25th Street, Kansas City, MO 64108. *Instrument:* (2) Each Scanning Acoustic Microscopes, Models SAM 2000 and WINSAM 100. *Manufacturer:* Kramer Scientific Instruments GmbH, Germany. *Intended Use:* The instruments are intended to be used for projects including micro-mechanical measurement at the cellular/tissue level, and interfacial coupling defects in experimental oxirane/polyol composites. *Other studies include:* (1) Determining whether the lack of mechanical strain permits the osteocyte to send signals initiating bone resorption and (2) to study the fracture mechanics of newly synthesized low-shrinking and low-stress producing resin composite restorative materials. Application accepted by Commissioner of Customs: January 3, 2003.

Docket Number: 03–002. *Applicant:* University of Colorado, JILA, 440 UCB, Boulder, CO 80309–0440. *Instrument:* DFB Fiber Laser with Amplifier, Model Y10. *Manufacturer*: Koheras A/S, Denmark. *Intended Use:* The instrument is intended to be used to study the energy level of a single trapped Hg+ ion. *Application accepted by Commissioner of Customs:* January 15, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–3083 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303D]

Proposed Information Collection; Comment Request; Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

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 April 8, 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 Dr. Vernon Leeworthy, 301–713–3000, extension 138, or at *Bob.Leeworthy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to obtain socioeconomic monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of ''no take zones'' in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the ≥no take zones.≥ Three voluntary data collection efforts support the socioeconomic monitoring program.

The first collection involves a set of four panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and assess the impacts of Sanctuary regulations. Information on catch, effort, revenues, operating and capital costs will be obtained to do financial performance analysis. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data would be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the ≥no take areas≥ versus other areas for snorkeling, scuba diving and glass-bottom boat rides. Volunteers will collect the logbooks monthly.

The third collection will survey all users of ≥no take areas.≥ Respondents will be asked to rate both the importance and satisfaction with various natural resource attributes and characteristics (e.g., water clarity, coral cover, number and diversity of sea life, etc.).

II. Method of Collection

Interviews will generally be used. The users surveys will also include a mailed questionnaire, and dive shops will be requested to maintain records.

III. Data

OMB Number: 0648–0409.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 788.

Estimated Time Per Response: 3 hours for a commercial fishing panel member; 10 hours for a dive shop; and 20 minutes for a questionnaire or telephone survey of a visitor to or a resident of a Sanctuary Preservation Area or Ecological Reserve.

Estimated Total Annual Burden Hours: 725.

Estimated Total Annual Cost to Public: $0.

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 31, 2003.

Gwellnar Banks

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3001 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303E]

Proposed Information Collection; Comment Request; Commercial Harvesters and Recreational Party and Charter Boat Socio-cultural and Economic Data Collection Pilot Study

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 April 8, 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 Jonathan O'Neil at 978–281–9257, or to *Jon.Oneil@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to extend Paperwork Reduction Act approval for data collection for the Socio-Economic Pilot Study sponsored by the Atlantic Coast Cooperative Statistics Program (ACCSP) and conducted by the National Marine Fisheries Service. Due to a one year delay in initiating the project, data collection efforts must be extended through June 30th, 2004 to allow for completion of the proposed data collection cycle.

This pilot study is designed to develop socio-cultural and economic information systems for commercial and recreational fisheries. Three specific arenas are being addressed during this study. One is to identify and address potential problems with the mechanics of implementing the system. These include all data gathering, entry, and storage activities as well as the ability to link the data to all other ACCSP data. The second is to carry out a field test of the survey instrument across the different cultural and socio-economic contexts in which the data-gathering system must eventually be implemented. Field testing questions and instruments is standard procedure in preparing for any survey research. The third arena is to utilize the collected information for test runs of several standard economic models.

II. Method of Collection

The study is collecting social, cultural, and economic data from commercial and recreational party/charter fishing vessels' owners, captains, and crew via face-to-face interviews.

III. Data

OMB Number: 0648–0400.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 323.
Estimated Time Per Response: 15 minutes for an interview; and 15 minutes for a vessel captain/owner to gather business information.
Estimated Total Annual Burden Hours: 793.
Estimated Total Annual Cost to Public: $0.

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 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3002 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303G]

Proposed Information Collection; Comment Request; American Fisheries Act, Recordkeeping and Reporting Requirements.

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 April 8, 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 Patsy A. Bearden at 907–586–7228, or at *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI) which imposed major structural changes on the BSAI pollock fishery. The AFA provides the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner, while protecting non-AFA participants in the other fisheries. The AFA also affected the management of other groundfish, crab, and scallop fisheries off Alaska.

Much of the monitoring and enforcement burden is placed on participating AFA cooperatives and their members, which allows NOAA to manage the pollock fishery more precisely. Monitoring their own catch, vessels are able to individually (and in aggregate) come very close to harvesting exactly the amount of pollock they were allocated. NOAA requires certain reports and information to allow it to manage the fishery and monitor the program.

II. Method of Collection

Shoreside processor logbooks are submitted electronically. Other reports may be e-mailed, FAXed or submitted in paper form.

III. Data

OMB Number: 0648–0401.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.
Estimated Number of Respondents: 26.
Estimated Time Per Response: 20 hours for a cooperative preliminary report; 8 hours for a cooperative final report; 30 minutes for a non-member vessel contract fishing application; 35 minutes for a shoreside processor electronic logbook (SPELR); 5 minutes for a cooperative pollock catch report; and 5 minutes for a designation of agent for service of process.
Estimated Total Annual Burden Hours: 1,024.
Estimated Total Annual Cost to Public: $636.

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 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3084 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303H]

Proposed Information Collection; Comment Request; Estuary Restoration Act Database

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 April 8, 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 Becky Allee, NMFS Restoration Center, 1315 East-West Highway, F/HC3, Silver Spring, MD 20910 (or via Internet at *becky.allee@noaa.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

Collection of estuary habitat restoration project information (e.g., location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act (ERA) of 2000. The Estuary Restoration Act Database is to contain information for estuary habitat restoration projects funded through the ERA as well as non-ERA project data that meet quality control requirements and data standards established under the Act. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. It will be accessible to the public via Internet for data queries and project reports. Recipients of ERA funds will be required to submit specific information on habitat restoration projects into the ERA Database through an interactive Web site available over the Internet. Projects that are not funded through the ERA can be voluntarily entered into the database by project managers. Other federal agency and private grant programs may also require recipients to enter project information in the ERA database.

II. Method of Collection

Project managers will electronically submit estuary restoration project information via NOAA's Estuary Restoration Act Database Web site. The Web site will contain a user-friendly data entry interface for project managers to enter and submit project information to the ERA database. The data entry interface will consist of a series of screens, containing several pull-down menus and text boxes, where users can enter specific project information (e.g. location, acreage restored, contacts, monitoring information). To facilitate the collection of information through the data entry interface, NOAA Fisheries will provide worksheets containing database fields that can be downloaded and printed from the Web site. These worksheets can be used by project managers to guide information collection, and can then serve as a reference as project managers enter project information over the Web site. The reporting forms will also be available in paper format to be sent to project managers as necessary.

The collection of estuary habitat restoration project information will be undertaken in a multi-phased approach. Project information will first be obtained from existing federal databases, and later from other existing state and regional databases. For projects funded through the Estuary Restoration Act, project managers will be required to enter project information into the database as part of their funding agreement. Submission of project information to the ERA Database may also be required by other public and private restoration financial assistance programs. For other projects implemented by not-for-profit institutions (primary), state, local, tribal governments, businesses and other for-profit organizations, project information can be entered into the database on a voluntary basis. Since database information will be provided by a wide range of respondents, data will be reviewed using a detailed quality assurance/quality control (QA/QC) program prior to being made available to the public. This QA/QC process will also ensure compliance with the Data Quality Act (Section 515). Projects entered into the ERA Database can be updated as new information is obtained but must be updated at least annually for use in database queries and reports.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; state, local, and tribal governments; the Federal government; and business or other for-profit organizations (limited to organizations in the above categories engaging in estuary habitat restoration).

Estimated Number of Respondents: 1,000.

Estimated Time Per Response: One hour per report. This is assuming that most information needed for the database has already been obtained or is known. Projects in the database must be updated at least annually. Information originally collected and submitted for a project does not need to be collected again to update the project.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: None.

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 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3085 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID 020303F]

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 Form for Membership on a National Marine Sanctuary Advisory Council.

Form Number(s): None.

OMB Approval Number: 0648-0397.

Type of Request: Regular submission.

Burden Hours: 150.

Number of Respondents: 150.

Average Hours Per Response: 1.

Needs and Uses: Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once a council has been chartered, the Sanctuary Manager starts a process to recruit members for that Council by providing notice to the public and asking interested parties to apply for the available seats. An application form and answers to guidelines for a narrative submission must be submitted to the Sanctuary Manager.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

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 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3003 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903D]

Marine Mammals; File No. 859–1680

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the United States Air Force, Environmental Management Office, Vandenberg Air Force Base, CA 93437 has been issued a permit to take California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 10, 2002, notice was published in the **Federal Register** (67 FR 63079) that a request for a scientific research permit to take the above listed species had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit is valid for 5 years and authorizes annual takes of up to 1200 California sea lions, 750 northern elephant seals, 300 northern fur seals, and 700 harbor seals inhabiting Vandenberg Air Force Base and the northern Channel Islands annually by harassment during various activities including capture, sedation, blood sampling, skin biopsy, physiological measurements, hearing sensitivity tests, attachment of scientific instruments, temporary captive maintenance, recapture for retrieval of instruments, surveys of abundance and distribution, incidental harassment, and accidental mortality. The movements and foraging behavior of seals exposed to launch noise and/or sonic booms will be compared with non-exposed control animals using remote VHF radio-telemetry, satellite transmitters, and electronic data loggers.

Dated: February 3, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3086 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by March 10, 2003.

Title and OMB Number: Defense Acquisition Regulation Supplement (DFARS) Part 243, Contract Modification and related clause at DFARS 252.243–7002; OMB Number 0704–0397.

Type of Request: Extension of a Currently Approved Collection

Number of Respondents: 440

Responses Per Respondent: 1

Annual Responses: 440

Average Burden Per Response: 4.8 hours (average)

Annual Burden Hours: 2,120

Needs and Uses: This request concerns information collection requirements related to certification of contractor requests for equitable adjustment.

Affected Public: Business or Other Not-For-Profit and Not-for-Profit Institutions

Frequency: On Occasion

Respondent's Obligation: Required to Obtain or Retain Benefits

OMB Desk Officer: Ms. Jacqueline Zeiher

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

DOD Clearance Officer: Mr. Robert Cushing

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

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2976 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Finance and Accounting Service Board of Advisors

ACTION: Notice.

SUMMARY: The Defense Finance and Accounting Service (DFAS) Board of Advisors is being renewed in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' Title 5 U.S.C., Appendix 2.

The DFAS Board of Advisors advises and assists the Under Secretary of Defense (Comptroller) and the Director, DFAS, with respect to providing world class finance and accounting services to the Department of Defense (DoD).

The DFAS Board of Advisors will continue to consist of a balanced membership of approximately ten senior executives and flag rank military officers, as well as several representatives from the private sector appointed by the Secretary of Defense.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Beverly Lemon, DFAS, 703–607–3839.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2977 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ground-Based Midcourse Defense Extended Test Range Draft Environmental Impact Statement

AGENCY: Missile Defense Agency/ Federal Aviation Administration, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Ground-Based Midcourse Defense (GMD) Extended Test Range Draft Environmental Impact Statement (DEIS), that analyzes the potential for environmental impacts associated with the proposed action of the establishment of an extended test range capability providing more realistic operational flight testing. The current capability includes missile launch sites and array of sensors and other test equipment located at the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii, and Vandenberg Air Force Base (AFB) in California.

The proposed action and alternatives examined in the DEIS include development of the capability for single and dual launches of interceptor and target missiles at the Kodiak Launch Complex (KLC) Alaska, RTS, and/or Vandenberg AFB, with intercepts over the Pacific Ocean. Development of these capabilities would entail construction of two interceptor launchers, one additional target launch pad and construction/alteration of launch support facilities at KLC; target pad modifications at RTS; modification of support facilities at Vandenberg AFB; construction of In-Flight Interceptor Communication System (IFICS) Data Terminals and military and commercial satellite communications in the mid-Pacific and at KLC or Vandenberg AFB; additional range instrumentation (tracking and range safety radars) in the vicinity of sites; and use of either existing Battle Management Command and Control (BMC2) facilities at Reagan Test Site, or new BMC2 facilities that may be developed at Forth Greely, Alaska and/or Shriever AFB, or Cheyenne Mountain Complex, Colorado, in the validation of the GMD operational concept effort.

Additionally, the proposed action and alternatives include the construction and operation of a Sea-Based Test X-Band Radar (SBX) that would operate in the Pacific broad ocean area and would be home-based in either Alaska, California, Washington, or Hawaii.

Public Hearings: In order to facilitate public review and comment on the DEIS, public hearings have been scheduled at the following cities:

City	Date	Location
Oxnard, CA	February 24, 2003	Oxnard Public Library.
Kodiak, AK	February 24, 2003	Kodiak High School.
Lompoc, CA	February 25, 2003	Lompoc City Council Chambers.
Anchorage, AK	February 25, 2003	Egan Convention Center.
Valdez, AK	February 26, 2003	Valdez Convention Center.
Everett, WA	February 27, 2003	Everett Holiday Inn.
Honolulu, HI	March 6, 2003	Disabled American Veterans Hall, Keehi Lagoon Park.

Detailed information on location and times for each of the public hearing will be published in local and regional newspapers two weeks in advance, and public service announcements will be provided to radio and television stations. MDA, GMD, and U.S. Army Space and Missile Defense Command personnel will attend all sessions to present information on the DEIS, to receive comments, and to answer questions.

Copies of the document will be made available at the following public libraries:

- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503
- Everett Library, 2702 Hoyt Ave, Everett, WA 98201
- Kodiak City Library, 319 Lower Mill Bay Rd, Kodiak, AK 99615
- Lompoc Public Library, 501 E North Ave, Lompoc, CA 93436
- Mountain View Branch Library, 150 S Bragaw St, Anchorage, AK 99508
- Oxnard Public Library, 251 S A St., Oxnard, CA 93030
- Valdez City Library, 212 Fairbanks, Valdez, AK 99686
- Hawaii State Library, Hawaii Documents Center, 478 South King St., Honolulu, HI 96813
- University of Hawaii at Manoa, Hamilton Library, 2550 The Mall, Honolulu, HI 96822

DATES: Public comments are invited and must be postmarked by March 24, 2003.

ADDRESSES: Requests for copies of the document or to provide comments on the DEIS should be addressed to: U.S. Army Space and Missile Defense Command, ATTN: SMDC–EN–V (Mrs. Julia Hudson-Elliott), 106 Wynn Drive, Huntsville, AL 35805, by e-mail at

gmdetreis@smdc.army.mil, or by phone at 1–800–823–8823.

FOR FURTHER INFORMATION CONTACT: For additional information on the MDA GMD program, please call Mr. Rick Lahner at (703) 697–8997.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2975 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense

ACTION: Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Future Strategic Strike Forces will meet in closed session on February 20–21, 2003; March 19–20, 2003; April 24–25, 2003; May 22–23, 2003; June 18–19, 2003; and July 23–24, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the future strategic strike force needs of the Department of Defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will: assess the estimated systems life of the current nuclear strike forces; assess the future need for nuclear strike forces and recommend a strategy for the evolution of the current nuclear force capability; identify promising non-nuclear strike systems with such capabilities and consequence that they should be coherently planned and directed with strategic nuclear forces; identify new concepts and approaches, to include hypersonics, for the application of these strategic nuclear and non-nuclear forces that address the future strategic environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2978 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 14, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 8, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: February 4, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Annual Performance Report and Report to the Secretary Under the Infants and Toddlers with Disabilities Program (Part C, IDEA) (SC).

Abstract: The State Interagency Coordinating Committee is required under section 641 of part C of the Individuals with Disabilities Education Act (IDEA) to submit an annual report to the Secretary and the State's governor on the status of the early intervention program for infants and toddlers with disabilities. States are also required to submit a performance report to the Secretary under section 80.40 of the Education Department General Administrative Regulations. This collection serves both of these functions.

Additional Information: An expedited review and approval is requested to give states the maximum time for preparing their response which is due on March 31, 2003.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden: Responses: 57.

Burden Hours: 1710.

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 *vivan.reese@ed.gov*. Requests may also be 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 may be directed to Sheila Carey at *Sheila.carey@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. 03–3124 Filed 2–6–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.365C]

Office of English Language Acquisition; Native American and Alaska Native Children in School Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Correction

On December 30, 2002, the Assistant Secretary published a notice in the **Federal Register** (67 FR 79581 through 79587) inviting applications for new awards for the Native American and Alaska Native Children in School Program. The standard and program specific forms that were supposed to be included in the notice were inadvertently excluded. This notice includes all of these forms. All other information provided in the December 20 notice remains the same.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW., Room MES 5605, Washington, DC 20202–6400. Telephone: 202–401–1427, or via the Internet: *samuel.lopez@ed.gov.*

If you use telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Program Authority: 20 U.S.C. 6821(c), 6822.

Dated: January 31, 2003.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐
Title: _____

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative _____ Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time 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 collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

OMB Approval No. 0348-004C

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employeeof a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

STUDENT DATA					
Name of Local Educational Agency					
SECTION A					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	NON-LEP	TOTAL
Total number of students to be served					

OMB Number 1885-0551 Expires 10/31/2005

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 FR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 10/31/2005

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1885–0551.** The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program,** Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

[FR Doc. 03–3042 Filed 2–6–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–18; Theoretical Research in Plasma and Fusion Science

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for theoretical research relevant to the U.S. program in magnetic fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in Fiscal Year 2004 should submit in response to this Notice.

The specific areas of interest are:

1. Magnetohydrodynamics and Stability
2. Confinement and Transport
3. Edge and Divertor Physics
4. Plasma Heating and Non-inductive Current Drive
5. Innovative/Integrating Concepts
6. Atomic and Molecular Processes in Plasmas

More specific information on each area of interest is outlined in the general and program specific **SUPPLEMENTARY INFORMATION** section below. OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. The Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this notice. Such grants, if funded, will be subject to periodic reviews of progress.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their previous application(s), which received funding. A Principal Investigator may submit only one application under each area of interest as listed above.

DATES: To permit timely consideration for awards in Fiscal Year 2004, applications submitted in response to this notice must be received by DOE no later than 4:30 p.m., April 15, 2003. Electronic submission of formal applications in PDF format is required.

Applicants are requested to submit a letter-of-intent by March 18, 2003, which includes the title of the application, the name of the Principal Investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. The letters-of-intent should be sent by E-mail to the following E-mail address: *john.sauter@science.doe.gov* and the Subject line should state: Letter-of-intent regarding Program Notice 03–18.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

1. Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*

2. Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address: *curt.bolton@science.doe.gov.*

3. Edge and Divertor Physics: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*

4. Plasma Heating and Non-inductive Current Drive: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*

5. Innovative/Integrating Concepts: Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address: *steve.eckstrand@science.doe.gov.*

6. Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

Program Funding

It is anticipated that about $4,000,000 of Fiscal Year 2004 funding will be available to fund new work, or renewals of existing work, from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant effort in future years (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. The number of grants funded, and the amount of funding for each grant, will depend on the number and quality of the applications received.

Collaborative research projects involving more than one institution, as well as basic work in support of the Scientific Discovery through Advanced Computing initiative, are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at: *http://www.science.doe.gov/production/grants/Colab.html.*

Since we expect that reviewers will be asked to review several applications, those applications from individual PIs or small groups (1–4 people) should be limited to a maximum of twenty (20) pages (including text and figures) of technical information, while applications from larger theory groups should be limited to thirty (30) pages. The PDF file may also include a few selected publications in an Appendix as background information. In addition, in the electronic submission, please limit biographical and publication information for the principal investigator and senior personnel to no more than two pages each. Each principal investigator should provide an E-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, (5) a discussion of the impact of the proposed research on other fields of science, and (6) for projects requiring significant computational resources (*e.g.*, at the National Energy Research Scientific Computing Center), an estimate and justification of the resources that will be required.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605 (*http://www.science.doe.gov/production/grants/605index.html*).

1. Scientific and/or technical merit of the project,

2. Appropriateness of the proposed method or approach,

3. Competency of the applicant's personnel and adequacy of the proposed resources,

4. Reasonableness and appropriateness of the proposed budget.

Scientific and technical merit also includes the importance and relevance of the proposed research to the U.S. fusion program. Accordingly, preference will be given to work based in the U.S.

In addition, proposals from theory groups will also be rated on the synergy of the group and the management of the group. With respect to synergy, the criteria are:

(1) Clear evidence of collaborative work.

(2) The extent to which the group addresses difficult problems requiring a team effort.

With respect to management the criteria are:

(1) Clear evidence of scientific leadership.

(2) The extent to which the management evaluates the relevance and scientific impact of the group's work.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors, such as ensuring an appropriate balance among the program areas and within the program areas, ensuring support for major computational efforts, ensuring support for experiments, and quality of previous performance.

Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability.

Program Specific Information

1. Magnetohydrodynamics and Stability

Grant applications are solicited for new research or continuation of past efforts in magnetohydrodynamics (MHD) theory in support of work on magnetically confined fusion plasmas. Current areas of interest include advanced tokamak (AT), innovative confinement concepts (ICC), burning plasma physics and steady state, high-beta plasma issues. Both analytical and computational approaches will be considered. Additional work is needed on nonlinear MHD codes to include new physics, such as extended MHD (including flows and various non-ideal MHD effects), resistive wall modes, and particularly neoclassical tearing modes. Finally, basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale MHD codes will also be considered.

2. Confinement and Transport

Applications will be considered in the area of confinement and transport in plasmas. This area covers plasma turbulence, energy, particle, momentum and radiation transport in the core of the plasma and theory based transport modeling. The work of interest includes work in support of tokamak as well as non-tokamak innovative concepts. Topics of interest include among others, electromagnetic effects on turbulence, shear flow generation and its impacts on transport, and understanding of the role of collisions in turbulent plasmas. Both analytical and computational work is of interest. Basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale codes to explore turbulence will also be considered.

3. Edge and Divertor Physics

Applications will be considered in the area of edge physics theory. This area covers edge plasma turbulence, energy, particle and radiation transport in the edge of the plasma and in the neighborhood of the separatrix. The work of interest includes neutrals transport in divertors and plasma edge region, atomic physics processes affecting temperature, radiation and flame front propagation in divertors, and pedestal and Elm theory and modeling. Both analytical and numerical models are of interest. Techniques and algorithms for modeling fast particles in the edge region as well as adaptive grid methods and their application to modeling of plasma turbulence and transport in the edge region will be considered.

4. Plasma Heating and Non-inductive Current Drive

Applications will be considered in the area of radio frequency (RF) physics in plasmas. This includes RF propagation, heating and current drive. Of interest are both analytical and numerical treatments of interaction of plasmas with radio frequency waves. These include electron cyclotron, ion cyclotron, lower hybrid, and Bernstein waves. Topics of interest include,

among others, physical processes involved in conversion layers, power deposition for temperature profile control, and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

5. Innovative/Integrating Concepts

Grant applications are desired for theoretical and computational research on innovative concepts that have the possibility of leading to improved magnetic fusion systems. Increased theoretical and computational research is needed to help in the analysis of experimental data and aid in planning innovative fusion related experiments. Topics of interest include: equilibrium and stability of 3D systems, including island formation; extension of turbulence models to 3D systems; improvement in extended MHD modeling of RFPs; increased understanding of turbulent transport in RFPs; and spheromak formation. Applications are also desired for theoretical and computational research on integrated studies that include multiple topics.

6. Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas. Basic atomic processes that are important for modeling high energy density plasmas produced by high power lasers or ion beams may also be considered. The program has found understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington DC, on January 31, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–3046 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 25, 2003, 8 a.m. to 5 p.m., and Wednesday, February 26, 2003, 8 a.m. to 12 p.m.

ADDRESSES: Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, February 25, 2003

- Welcome and Introduction
- Office of Science Highlights
- Office of Basic Energy Sciences Highlights
- Review of the FY 2004 Budget
- Report of the Workshop on Basic Research Needs to Assure a Secure Energy Future
- Summary of the 20-Year Basic Energy Sciences Facilities Roadmap

Wednesday, February 26, 2003

- Status of BESAC Activities

—Report on the Biomolecular Materials Workshop

—Update on the Catalysis Report

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov (e-mail).* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days 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 through Friday, except holidays.

Issued in Washington, DC, on February 4, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–3045 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–304–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Consolidated Edison Energy, Inc. and Rockland Electric Company; Order Granting Authorization To Make Affiliate Sales

Issued January 30, 2003.

I. Introduction

1. In this order, we grant an application under section 205 of the Federal Power Act (FPA) [1] by Consolidated Edison Energy, Inc. (CEE) and Rockland Electric Company (RECO) (collectively, Applicants), requesting that the Commission grant authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the statewide auction bidding process approved by the New Jersey Board of Public Utilities (BPU). This order concludes that the BPU-approved bidding process as described below alleviates the Commission's concerns regarding affiliate abuse. This order benefits customers by permitting power to be bid into the BPU-approved auction while protecting against affiliate abuse.

[1] 16 U.S.C. 824d (2000).

II. Background

2. On December 20, 2002, Applicants filed the instant application, stating that ''Commission approval is sought because both CEE and RECO have codes of conduct and electric tariffs that generally prohibit wholesale sales of electric power to affiliates absent approval from the Commission under [section] 205 of the FPA.'' [2] Accordingly, they request, to the extent necessary, waiver of the applicable provisions of Applicants' market-based rate tariffs, codes of conduct and any other applicable Commission regulations. Applicants request expedited consideration to allow them to participate in the BPU-sponsored statewide auction that will commence on February 3, 2003.

3. CEE and RECO are corporate affiliates and subsidiaries of Consolidated Edison, Inc. (Con Ed). CEE has on file a Commission-approved market-based rate tariff and code of conduct. RECO is a wholly-owned subsidiary of Orange and Rockland Utilities, Inc. (O&R) and provides retail electric service in New Jersey.

4. Applicants state that the BPU approved two statewide bidding auctions as the means for procuring Basic Generation Service (BGS) [3] for electric customers in New Jersey, the first of which was concluded in February 2002.[4] They state that in December 2002, the BPU approved an auction design for a statewide auction to commence on February 3, 2003, for the provision of all the BGS requirements for the period of August 1, 2003 to May 31, 2004 and a portion of the BGS requirements for the period of June 1, 2004 through May 31, 2006.

III. Notice of Filing and Pleadings

5. Notice of Applicants' filing was published in the **Federal Register,** 68 FR 554 (2003), with protests and motions to intervene due on or before January 10, 2003. Public Service Electric and Gas Company (PSE&G) filed a timely motion to intervene [5] and protest. On January 17, 2003, Applicants filed an answer.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[6] PSE&G's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213 of the Commission's Rules of Practice generally prohibits answers to protests unless otherwise ordered by the decisional authority.[7] We will permit Applicants' answer because it has aided us in understanding the issues.

B. Substantive Matters

7. As noted, Applicants ask the Commission to permit CEE to participate in the BPU-approved statewide auction process to the extent that CEE may bid to supply the electric load requirements of its affiliate RECO. Applicants also request, if necessary, waiver of the provisions of the applicable codes of conduct and market-based rate tariffs that, among other things, prohibit wholesale sales of electric power to affiliates absent approval from the Commission under section 205 of the FPA.[8]

8. Applicants assert that the proposed sale in this case would originate through a competitive bid process supervised by the state regulatory authority with jurisdiction over the rates of the purchasing utility and that the auction process is designed to prevent affiliate abuse. They describe the auction process as follows:

> The auction process is a completely competitive one based entirely on price. The bids are submitted electronically through the internet. During the bidding process, there is no contact outside of the process between any one supplier and an [electric distribution company (EDC)] concerning the bids. Indeed, during the auction process, the EDCs do not know which suppliers are bidding to supply their BGS customer load. Only the auction manager, National Economic Research Associates, Inc. (''NERA''), an independent consultant, is privy to such information. The auction commences by an EDC setting, in consultation with the BPU and the auction manager, a starting price. Suppliers bid the percentage of the EDC's BGS customer load that they are willing to supply at that price. They do this by bidding the number of tranches, each of which is equal to a set percentage of the EDC's overall BGS customer load, that they are willing to supply at the applicable price. Generally speaking, the auction manager then gradually lowers the price and suppliers continue to bid the volume they are willing to supply until the price is at the lowest point where one hundred percent of the EDC's BGS customer load is still covered by the suppliers' volumetric bids. Once the lowest price is determined, and the BPU approves it, the EDC and each of the winning suppliers are required to enter into the applicable BGS Supplier Master Agreement that was approved by the BPU in its decision and order issued on December 4, 2002 in Docket No. EX01110754.[9] There is no individualized negotiation of the BGS Supplier Master Agreement between the winning suppliers and the EDC. The price described above is the price that is paid under the BGS Supplier Master Agreement for the supply of BGS.[10]

9. The Commission has approved affiliate sales based upon a competitive bidding process only after the Commission has evaluated the bidding process and determined that, based on the evidence, the proposal was a result of direct head-to-head competition between the affiliates and competing unaffiliated suppliers in a formal solicitation or informal negotiation process.[11] In *Conectiv Energy Supply, Inc.*,[12] the Commission accepted for filing, among other things, a service agreement between Conectiv Energy Supply, Inc. (CESI) and its affiliate Atlantic City Electric Company (Atlantic) pursuant to which CESI would make sales of capacity, energy and ancillary services to Atlantic under CESI's market-based rate tariff. In that case, the Commission evaluated the first BPU bid process and determined that the process ''alleviates our concerns regarding affiliate abuse.''

10. PSE&G states that it does not oppose CEE's proposal to bid in the BGS auction. However, PSE&G requests that Applicants' filing be rejected, arguing that the Commission lacks jurisdiction over the BGS auction. It argues that BGS is a retail service subject to the BPU's jurisdiction because the underlying BGS supply contract, the BGS Master Supply Agreement (Agreement), creates a direct supply arrangement between the BGS supplier and the end-user of electricity

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[2] Applicants' Transmittal Letter at 4.

[3] BGS is electric generation service that is provided by a New Jersey electric distribution company to any customer who has not chosen an alternative power supplier. BGS is known in other states as provider of last resort service or default service.

[4] *See* Electric Discount and Energy Competition Act of 1999, *N.J.S.A.* 48:3–49 *et seq.,* which provides the framework for the transition from a regulated to a competitive market place in New Jersey.

[5] PSE&G states that it is the major supplier of electricity in New Jersey. It further states that it is a major distributor of electricity in New Jersey and a transmission-owning member of the PJM Interconnection LLC regional transmission organization and a provider of wholesale transmission service to surrounding regions.

[6] 18 CFR 385.214 (2002).

[7] 18 CFR 385.213 (2002).

[8] As noted above, CEE has a market-based rate tariff on file with the Commission. RECO is governed by the tariffs and code of conduct filed by O&R with the Commission on behalf of the Orange and Rockland System.

[9] There are two applicable BGS Master Supplier Master Agreements (BGS–FP for Basic Generation Service—Hourly Energy Pricing and BGS–HEP for Basic Generation Service—Fixed Pricing). Applicants attached two *pro forma* BGS Supplier Master Agreements (one for BGS–FP and one for BGS–HEP) to their filing.

[10] Applicants' Transmittal Letter at 3–4.

[11] *See* Connecticut Light & Power Company and Western Massachusetts Electric Company, 90 FERC ¶ 61,195 at 61,633–34 (2000); Aquila Energy Marketing Corp., 87 FERC ¶ 61,217 at 61,857–58 (1999); MEP Pleasant Hill, LLC, 88 FERC ¶ 61,027 at 61,059–60 (1999); Boston Edison Co. Re: Edgar Electric Energy Co., 55 FERC ¶ 61,382 at 62,167–69 (1991).

[12] 91 FERC ¶ 61,076 at 61,269 (2000).

and that RECO's role would be that of an agent for BGS customers. PSE&G states that section 13.2 of the Agreement provides that ''[E]ach BGS–FP Supplier shall at all times be deemed to hold title to electric energy until delivery to the retail meter of the Customer at which time title shall be deemed to pass to such Customer.'' Thus, PSE&G argues that Commission approval is not required in order for CEE to bid in the BGS auction to sell to RECO. Alternatively, if the Commission does assert jurisdiction over BGS Agreements, PSE&G requests that it grant blanket waivers to all similarly-situated companies.

11. In response to PS&G's protest, Applicants state:

In view of the February 3, 2003 date for submitting bids in New Jersey's BGS auction, [Applicants] simply seek to clarify that the Commission does not have to resolve the wholesale-retail jurisdictional issue raised by PSE&G prior to February 3rd in order for CEE to participate in the RECO auction. It would suffice for the Commission to simply waive any affiliate-transaction limitations of [Applicants'] electric tariffs or codes of conduct insofar as they might apply. Granting such waivers prior to February 3rd would serve the public interest by enabling CEE to participate in the auction and thereby would increase overall participation and competition in the BGS auction. [Applicants] have no objection to PSE&G's alternative proposal that the Commission grant blanket waivers to permit participation in the BGS auction to all companies that are similarly situated to CEE and RECO.[13]

12. As noted above, Applicants' transmittal letter assumes that, if CEE is a successful bidder, the proposed transaction would involve a wholesale sale by CEE to its affiliate RECO that requires Commission approval. In these circumstances, we will assume (without deciding) that we have jurisdiction.[14] The BGS competitive bid process described by Applicants alleviates the Commission's concerns regarding affiliate abuse. Therefore, we will grant Applicants' request for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process.

13. Because we believe that the BPU auction process alleviates our concerns as to affiliate abuse, the Commission would authorize similarly-situated public utilities (with Commission-approved market-based rate tariffs and with tariff prohibitions on affiliate sales absent prior Commission authorization) to make sales to their affiliates as part of their participation in the BPU-approved auction. Such similarly-situated public utilities must either make an appropriate section 205 filing[15] or file a petition explaining why they believe we lack jurisdiction.[16]

The Commission orders:

(A) Applicants' application for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process is hereby granted, as discussed in the body of this order.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3114 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

[13] Applicants' Answer at 2.

[14] We note that the *pro forma* Agreements contain several indicia that would suggest a finding that entry by a successful bidder into the requisite BPU-approved supply agreement and performance thereunder will result in a wholesale sale. (The relevant provisions are the same in the BGS-FP Agreement and the BGS–HEP Agreement.) As an initial matter, the parties to the Agreements are the BGS Supplier (here, CEE) and the electric distribution company (here, RECO). There is no provision in the Agreements that establishes privity of contract between the retail customers and the BGS Supplier; retail customers cannot enforce the contract against the BGS Supplier, nor can the BGS Supplier enforce the contract against the retail customer. (*E.g.,* BGS–FP Agreement, Article 2.1). Further, the electric distribution Company (here, RECO) would execute the contract in its own name and be obligated to pay the BGS Supplier from its own funds. (*E.g.,* BGS–FP Agreement, Article 2.2). The Agreements also provide that the agreement is a ''legal and binding obligation of the Company [(*i.e.,* RECO)].'' (*E.g.,* BGS–FP Agreement, Article 3.2). In addition, the ''Company's performance under this agreement is not contingent upon the performance of [the retail] Customers or the ability of [the retail] Customers to pay rates;'' the Company's non-payment, insolvency, illegality (including Federal Energy Regulatory Commission obligations), or material breach are all events of default for the Company and upon default, the BGS Supplier would receive damages from RECO, including liquidation and termination; and certain PJM penalties and costs are allocated among the BGS Supplier and the Company. (*E.g.,* BGS–FP Agreement, Articles 3.2, 5.1 and 5.3). Further, the Agreements provide that to the extent that the Agreement is deemed to be subject to the Commission's jurisdiction, the standard of review for changes to any sections of the Agreement specifying the rate(s) or other material economic terms and conditions will be the *Mobile-Sierra* ''public interest'' standard of review. (*E.g.,* BGS–FP Agreement, Article 11.2).

[15] *See* Aquila, Inc., 101 FERC ¶ 61,331 at P 12 (2002).

[16] In the Prior Notice Order, the Commission advised that ''[t]o the extent a utility remains uncertain, even after consulting this order and the Appendix, as to its obligation to file rates and charges for a particular transaction or type of transaction, it should assume the initiative to seek a specific ruling. The easiest and most efficient way to do this is to file the agreement pursuant to part 35 of the Commission's regulations * * * and simultaneously request the Commission to disclaim jurisdiction.'' *See* Prior Notice and Filing Requirements Under part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,977–78 (1993) (Prior Notice Order) (emphasis deleted).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–88–000, et al.]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Pacific Gas and Electric Company et al.; Order Partially and Fully Granting Rehearings and Partially Granting Complaints

Issued January 29, 2003.

In the matter of: ER02–1330–002, EL02–88–000, EL03–3–000 and ER02–1472–001, EL03–4–000 and ER02–1151–001, EL03–5–000 and ER02–1069–001, EL03–13–000 and ER02–2243–002, EL03–12–000; Pacific Gas and Electric Company, Wrightsville Power Facility, LLC v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Services, Inc., Entergy Services, Inc., Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC; Order Partially and Fully Granting Rehearings and Partially Granting Complaints.

1. In this order, we partially and fully grant the requests for rehearing and partially grant the complaints in the above-captioned proceedings and hold that the interconnection agreements (IAs) in these dockets must be modified to conform with our recent decision in *Duke Hinds II.*[1] Our holdings here benefit the public interest by assuring that the rates, terms, and conditions for interconnection service are just and reasonable, and provide the parties with a reasonable means to ensure the reliable operation, protection, and integrity of their transmission systems.

2. More specifically, we partially grant rehearing in *Pacific Gas and Electric Company*[2] (Docket No. ER02–1330–002) and find that the IA in this docket is unjust and unreasonable. We also partially grant the rehearings in *Entergy Gulf States, Inc.*[3] (Docket No. ER02–1472–001); *Entergy Services, Inc.*[4] (Docket No. ER02–1151–001); *Entergy Services, Inc.*[5] (Docket No. ER02–1069–001); and fully grant the rehearing in *Entergy Services, Inc.*[6] (Docket No. ER02–2243–002) and find that the IAs

[1] Entergy Services, Inc., EL02–107–000, *et al.* (January 28, 2003) (*Duke Hinds II*).

[2] 101 FERC ¶ 61,079 (2002) (PG&E).

[3] 99 FERC ¶ 61,234 (2002).

[4] 99 FERC ¶ 61,097 (2002).

[5] 99 FERC ¶ 61,077 (2002).

[6] 100 FERC ¶ 61,397 (2002).

in these dockets are unjust and unreasonable under section 206 of the Federal Power Act (FPA).[7] We also partially grant the complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000.[8] In each of these cases, we direct modification to the respective IAs.

Background

3. On March 15, 2002, the Commission issued an order in *Duke Hinds I*.[9] In that proceeding, Entergy, the transmission provider, had filed a revision to an unexecuted IA to reflect Duke's, the generator's, election of certain additional upgrades that were not included in the original, executed IA, which had been previously accepted by the Commission. The Commission accepted the revisions, stating that, once the Commission accepts an IA, where the interconnecting generator assumed the responsibility, without protest, ''to pay, on a direct assignment basis without credit, for certain facilities,'' the generator is ''bound to the terms and conditions of the [original interconnection agreement] into which it willingly entered.'' [10] Further, the Commission stated that it ''can act on behalf of a party to revise terms and conditions to which the parties have agreed and which the Commission has accepted, only if it finds that the contract is contrary to the public interest under Section 206 [of the FPA].'' [11]

4. Duke sought rehearing and filed a complaint, pointing to language in the IA which specifically reserved the parties' rights to request changes to the IA under section 205 [12] or 206 of the FPA.

5. On January 28, 2003, the Commission issued *Duke Hinds II.* In *Duke Hinds II,* the Commission agreed with Duke that the revised IA was subject to review under a just and reasonable standard because the agreement contained provisions that allowed either party unilaterally to request changes to the IA under section 205 or 206 of the FPA. Further, the Commission found that the more stringent public interest [13] standard of review was not the appropriate standard of review; in *Duke Hinds I*, the Commission had ''failed to recognize * * * the existence of specific provisions [in the interconnection agreement] preserving [the generator's] statutory right to file a complaint under section 206 and have the Commission revise the [IA] if we find [it] to be unjust and unreasonable.'' [14] The Commission then directed Entergy to revise its interconnection agreement to reclassify certain facilities as network upgrades and to provide the generator with transmission credits, plus interest, for the costs associated with those facilities, consistent with long-held Commission policy.[15]

Discussion

6. We will grant the above-captioned requests for rehearing and complaints. All of these IAs involve crediting issues that are inconsistent with Commission Policy. Further, each of the respective Commission-accepted IAs contain language, similar to the language found in the *Duke Hinds II* IA, preserving the rights of the parties to unilaterally seek revisions to their agreements, under sections 205 and 206 of the FPA. Thus, the Commission should evaluate these IAs under the just and reasonable, and not public interest, standard.

1. PG&E

7. In *Pacific Gas and Electric Company* [16] (Docket No. ER02–1330–002), the Commission conditionally accepted for filing, as modified, several executed agreements, to be effective May 17, 2002, relating to the interconnection of PG&E's transmission system and Los Medanos Energy Center LLC (LMEC), subject to the outcome of any future Commission action in the *Duke Hinds I* rehearing and complaint proceedings. We will now partially grant rehearing with respect to this issue and establish a May 17, 2002 refund effective date, the date the agreements became effective. Specifically, we find that because the agreements at issue contain provisions [17] that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II*, and thus the agreements must be modified to be consistent with Commission policy. We will direct PG&E to file such modifications within 30 days of the date of this order.

2. Other IA-Related Rehearing Requests

8. In addition, we have reviewed the IAs, and their corresponding pending requests for rehearing, in other proceedings and partially and fully grant those rehearings. Because the IAs at issue also contain provisions that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II.* We find that these agreements must be modified to be consistent with Commission policy. Specifically, in this regard, we partially grant the requests for rehearing in Entergy Gulf States, Inc. (in Docket No. ER02–1472–001); Entergy Services, Inc. (in Docket No. ER02–1151–001); Entergy Services, Inc. (in Docket No. ER02–1069–001); and fully grant the request for rehearing in Entergy Services, Inc. (in Docket No. ER02–2243–002).

9. Accordingly, pursuant to Section 206 of the FPA, the Commission will direct modification to the IAs in those proceedings, in accordance with our ruling in *Duke Hinds II* and Commission policy, within 30 days of the date of this order.

10. In order to give maximum protection to customers, we will establish the refund date at the earliest date allowed. Accordingly, we will direct the Secretary to publish this order in the **Federal Register** and, for Docket Nos. EL03–3–000 and ER02–1472–001; EL03–4–000 and ER02–1151–001;

[7] 16 U.S.C. 824e (2000).

[8] We note that although we are partially granting most of the requests for rehearing and the complaints in the above captioned dockets, we plan to address the other issues raised in these proceedings, that are not addressed in this order, at a later date.

[9] Entergy Services, Inc., 98 FERC ¶ 61,290 at 62,261–62 (2002) (*Duke Hinds I*).

[10] *Id.*

[11] *Id.* at ¶ 62,262.

[12] 16 U.S.C. 824d (2000).

[13] *See United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*). Under the Mobile-Sierra doctrine, where the Commission has accepted a contract that contains a provision precluding changes to that contract, the Commission can act on behalf of a party to revise terms and conditions only if the Commission finds that the contract is contrary to the public interest, under section 206 of the FPA.

[14] *Duke Hinds II*, slip op. at P 21. *See also Papago Tribal Utility Authority* v. *Federal Energy Regulatory Commission*, 723 F.2d 950, 954 (DC Cir. 1983).

[15] *See* Consumers Energy Company (*Consumers*) 95 FERC ¶ 61,233 at 61,804 (2001); *reh'g denied,* 96 FERC ¶ 61,132 at 61,561 (2001) (holding that all network upgrade costs should be credited back to the customer that funded the upgrades once delivery service begins). American Electric Power Service Corp., 91 FERC ¶ 61,308 at 62,051 (2000), *order denying reh'g and granting clarification*, 94 FERC ¶ 61,166 (2001), *order dismissing request for clarification*, 95 FERC ¶ 61,130 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC*, No. 01–1194 (DC Cir. April 23, 2001) (*AEP*) (stating the Commission's policy on crediting and interest on credits).

[16] 101 FERC ¶ 61,079 (2002) (Docket Nos. ER02–1330–000; ER02–1330–001).

[17] Paragraph 11 of the Supplemental Letter Agreement (SLA) to the IAs states that, ''notwithstanding any other provisions of the SLA, GSFA, or the GIA, PG&E and [LMEC] retain their full and respective rights under Sections 205 and 206 of the [FPA] to file to change or challenge any rate, term or condition in any agreement between them related to LMEC that is or may be on file with the [Commission.]'' *See also* Paragraph 5(a) of the SLA.

EL03–5–000 and ER02–1069–001; EL03–13–000 and ER02–2243–002, the refund effective date will be 60 days from the date on which this order is published in the **Federal Register**.

3. Other IA-Related Complaints

11. We will also partially grant the complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000. We find that, because the agreements at issue contain provisions that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II*, and thus the agreements must be modified to be consistent with Commission policy. Accordingly, we will direct modifications to the IAs in these proceedings within 30 days of the date of this order.

12. In order to give maximum protection to consumers, we will establish the refund date at the earliest date allowed. For Docket No. EL02–88–000, because Wrightsville Power filed a complaint on its own motion, we will establish the refund date as July 19, 2002, 60 days after it filed the complaint. For Docket No. EL03–12–000, because Kinder Morgan filed a complaint on its own motion, we will establish the refund date as December 16, 2002, 60 days after it filed the complaint.

The Commission orders:

(A) The requests for rehearing in Docket Nos. ER02–1330–002, ER02–1472–001, ER02–1151–001, and ER02–1069–001 are hereby partially granted, as discussed in the body of this order.

(B) The request for rehearing in Docket No. ER02–2243–002 is hereby granted.

(C) The complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000 are hereby partially granted, as discussed in the body of this order.

(D) The transmission providers in the instant dockets are hereby directed to modify their IAs, as discussed in the body of this order, within 30 days of the date of this order.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

(F) This order is hereby effective as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3113 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 31, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit

b. *Project No.:* 12385–000

c. *Date filed:* October 3, 2002

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project:* The Grenada Dam Hydroelectric Project would be located on the Yalobusha River in Grenada County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Grenada Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Grenada Dam and Reservoir, would consist of: (1) Two 80-foot-long, 96-inch-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 12.75 megawatts, (3) a 3-mile-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 78 gigawatthours.

k. 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, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. Please include the project number (P–12385–000) on any comments or motions filed.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3119 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.* Weekly receipt of Environmental Impact Statements filed January 27, 2003, through January 31, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030046, DRAFT EIS, BLM, WY, South Powder River Basin Coal Project, Proposed Application for Leasing of Five Federal Coal Tracts: NARO North/South (North Antelope/Rochelle Mine Complex), Little Thunder (Black Thunder Mine) West Roundup (North Rochelle Mine) and West Antelope (Antelope Mine), Campbell and Converse Counties, WY, Comment Period Ends: April 08, 2003, Contact: Nancy Doelger (307) 261–7627.

This document is available on the Internet at: *http://www.wyblm.com.*

EIS No. 030047, DRAFT EIS, AFS, MI, Interior Wetlands Project, Proposal to Harvest Timber, Prune White Pine Trees, Adjust the Growth System, Create and Maintain Wildlife Openings and Improve Transportation System, Hiawatha National Forest, Eastside Administrative Unit, Chippewa County, MI, Comment Period Ends: April 08, 2003, Contact: Martha Sjogren (906) 643–7900.

This document is available on the Internet at: *http://www.fs.fed.us/r9/hiawatha.*

EIS No. 030048, DRAFT EIS, DOD, CA, AS, AK, HI, WA, Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR) Project, Proposal to Construct and Operate Additional Launch and Test Facilities including the Sea Based X-Band Radar, Comment Period Ends: March 24, 2003, Contact: David Hasley (256) 955–4170.

Amended Notices

EIS No. 030034, DRAFT EIS, AFS, CA, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA, Comment Period Ends: March 17, 2003, Contact: Rich Bednarski (530) 283–7641.

Revision of FR Notice Published on 1/31/2003: Correction to Telephone number.

Dated: February 4, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3060 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–F65034–WI Rating LO, Northwest Howell Project, Timber Harvest, Wildlife Openings Maintenance, Aspen and Jack Pine Types Regeneration, Hardwood and Conifer Tree Seedilings Protection, Lakes Habitat Improvements and Transportation System Development, Eagle-Florence District, Chequameg-Nicolet National Forest, Forest and Florence Counties, WI.

Summary: EPA has no objections to this vegetation management plan since the design features in the project should function to avoid and reduce potential impacts.

ERP No. D–AFS–F65035–WI Rating LO, Cayuga Project Area, Various Resource Management Projects, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI.

Summary: EPA has no objections to the preferred alternative, we believe Alternative 4 is environmentally preferable because of its emphasis on long-term ecosystem health over the desires of forest resource consumers.

ERP No. D–AFS–G65085–NM Rating EC2, Sacramento, Dry Canyon and Davis Grazing Allotments, Authorization of Livestock Grazing Activities, Lincoln

National Forst, Sacramento Ranger District, Otero County, NM.

Summary: EPA expressed environmental concerns and requested additional information to address and mitigate potential impacts to federally protected species under the Endangered Species Act.

ERP No. D–BLM–K09808–NV Rating LO, Ivanpah Energy Center Project, 500 Megawatt (MW) Gas-Fired Electric Power Generating Station Construction and Operation, Approval, Right-of-Way Grant, BLM Temporary Use Permit, FHWA Permit to Cross Federal Aid Highway, U.S. Army COE Section 10 and 404 Permits and NPDES Permit Issuance, Clark County, NV.

Summary: EPA expressed a lack of objections with the proposed action.

ERP No. D–BLM–L65407–OR Rating EC2, Lookout Mountain Forest and Rangeland Health Project and Baker Resource Management Plan (RMP) Amendment involving Changes in Visual Resources Management (VRM) Inventory Classes and Decommissioning of Roads, Implementation, Baker City, Baker County, OR.

Summary: EPA expressed environmental concerns with the lack of specific information on noxious weed treatment, and potential impacts to air quality from prescribed burns.

ERP No. D–JUS–K80044–CA Rating LO, Sacramento County Juvenile Hall Expansion Project, Accommodation of 90 New Beds in the Short-Term and 240 New Beds in the Long-Term, Sacramento County, CA.

Summary: EPA has no objection to the proposed action since the DEIS provided an adequate analysis of potential impacts, and all potentially significant impacts have been mitigated or accounted for.

ERP No. DS–COE–E36154–FL Rating LO, Upper St. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, New Information concerning Preservation and Enhancement of Floodplain and Aquatic Habitats North of the Fellsmere Grade, Brevard County, FL

Summary: While future monitoring and some changes may be necessary to determine the degree of successful marsh enhancement resulting from these water manipulations, EPA has no environmental objections to its implementation.

Final EISs

ERP No. F–COE–E35086–FL, Fort Pierce Shore Protection Project, Future Dredging of Capron Shoal, Implementation, St. Lucie County, FL.

Summary: EPA determined that the unavoidable losses attendant to implementation of this project have been appropriately mitigated, therefore EPA has no objection to the proposed action.

ERP No. F–DOE–L05224–WA, Maiden Wind Farm Project, Construction and Operation of up to 494 Megawatts (MW) of Wind Generation on Privately-and Publicly-owned Property, Conditional Use Permits, Rattlesnake Hills, Benton and Yakima Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K61152–CA, Santa Monica Mountains National Recreation Area General Management Plan, Implementation, Los Angeles and Ventura Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–E11050–KY, Blue Grass Army Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility to Destroy the Chemical Agent and Munitions, Madison County, KY.

Summary: EPA has no objection to the proposed action or the various technologies which will be used to accomplish this objective.

Dated: February 4, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3061 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–2]

FY2003–2004 Great Lakes National Program Office Funding Guidance—Request for Proposals

AGENCY: Environmental Protection Agency.

ACTION: Notice of funding availability.

SUMMARY: The U.S. Environmental Protection Agency's Great Lakes National Program Office (GLNPO) is requesting Proposals for up to $4,827,000 for projects furthering protection and clean up of the Great Lakes ecosystem.

DATES: The initial deadline for all Proposals is 8 a.m. Central time, March 31, 2003, with a separate rolling deadline for specified conferences and publications.

ADDRESSES: The RFP is available on the Internet at *http://www.epa.gov/glnpo/fund/2003guid/*. It is also available from Lawrence Brail (312–886–7474/*brail.lawrence@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/*russ.michael@epa.gov*).

SUPPLEMENTARY INFORMATION: Proposals are requested through four requests:

RFP 1: General Request. $2,720,000 for Great Lakes projects addressing Contaminated Sediments, Pollution Prevention and Reduction, Habitat (Ecological) Protection and Restoration, Invasive Species, and Strategic or Emerging Issues.

RFP 2: Specific LaMP/RAP Requests—$1,752,000 for specific Great Lakes projects furthering the Lakewide Management Plans and Remedial Action Plans, such as monitoring, outreach, training, assessment, and coordination.

RFP 3: Conferences and Publications. $275,000 for Great Lakes conferences and publications, and for specific conferences on the State of Lake Michigan and Basin-wide RAP Priorities.

RFP 4: Grants Servicing Intermediary. $60,000 to $100,000 for an ''intermediary'' organization to make and administer grant sub-awards for habitat and other areas.

Assistance (through grants, cooperative agreements, and interagency agreements) is available pursuant to Clean Water Act section 104(b)(3) for activities in the Great Lakes Basin and in support of the Great Lakes Water Quality Agreement. State pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, and organizations are eligible to apply.

Dated: January 30, 2003.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 03–3064 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–1]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2001 is available for public review. Annual U.S. emissions for the period of time from 1990–2001 are summarized and presented by source

category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), Hydrofluorocarbons (HFC), perflourocarbons (PFC), and sulfur hexaflouride (SF_6) emissions. The inventory also includes estimates of carbon sequestration in U.S. forests and, new this year, an updated assessment of emissions from the electric power industry. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC) and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. William N. Irving at: Environmental Protection Agency, Clean Air Markets Division (6204N), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 565–6673. You are welcome and encouraged to send an e-mail with your comments to *irving.bill@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William N. Irving, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Clean Air Markets Division, (202) 565–9065, *irving.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's global warming site at *http://www.epa.gov/globalwarming/publications/emissions/.*

Dated: January 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–3063 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–7]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges From Construction Activities—Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On December 20, 2002 (67 FR 78116), EPA published a notice of the availability of the proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges from Construction Activities and requested comments on the draft by February 13, 2003. The purpose of this notice is to extend this comment period to February 13, 2003.

DATES: Comments on the proposed general permits must be received by February 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Office of Wastewater Management, Office of Water, EPA Headquarters at tel.: 202–564–0768 or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0055. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. A copy of both the proposed permit and fact sheet are available for viewing and downloading from the Water Docket. 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official 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 appropriate docket identification number.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in

Docket ID No. OW–2002–0055. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2002–0055. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0055.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OW–2002–0055. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Action Is Being Taken?

The comment period for the construction general permits is being extended for 10 days until February 13, 2003, in response to requests from the National Association of Homebuilders, the National Mining Association, and the Associated General Contractors of America. After the close of the public comment period, EPA will issue a final permit decision. This decision will not be made until after public comments have been considered and appropriate changes made to the permit.

Dated: February 3, 2003.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 03–3240 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 27, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0737.

Title: Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,000.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,000 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR section 64.1501(b) imposes disclosure requirements on information providers that offer ''presubscribed'' information services. The requirements are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into a contract to subscribe to them.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3000 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–49–B (Auction No. 49); DA 03–100]

Revised Inventory and Auction Start Date for Auction of Lower 700 MHz Band Licenses; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the Auction No. 49 inventory to include five additional licenses, and seeks comment on procedural issues related to the auction of these additional licenses. This document also revises the starting date for Auction No. 49 to provide additional time for bidder preparation and planning.

DATES: Comments are due on or before February 12, 2003, and reply comments are due on or before February 19, 2003. Auction No. 49 is scheduled to begin May 28, 2003.

ADDRESSES: All comments and reply comments must be filed electronically to the following address: *auction49@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Howard Davenport at (202) 418–0660. *For general auctions questions:* Lyle Ishida at (202) 418–0660 or Linda Sanderson at (717) 338–2888. *For service rule questions:* Amal

Abdallah, Evan Baranoff, Joanne Epps or Melvin Spann at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Revised License Inventory Public Notice* released on January 29, 2003. The complete text of the *Auction No. 49 Revised License Inventory Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 49 Revised License Inventory Public Notice* may also be purchased from the Commission's duplicating contactor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email to *qualexint@aol.com.*

I. Background

1. In the *Auction No. 49 Comment Public Notice*, 67 FR 72946 (December 09, 2002), the Wireless Telecommunications Bureau (''Bureau'') announced the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003 (''Auction No. 49''). The Bureau also sought comment on procedures for the auction of those licenses. In response to the *Auction No. 49 Comment Pubic Notice*, several commenters requested that the Bureau include the Lower 700 MHz band D block (716–722 MHz) licenses in Auction No. 49. By the *Auction No. 49 Revised License Inventory Public Notice*, the Bureau revises the auction inventory to include the five licenses in the Lower 700 MHz band D block (716–722 MHz band) that remained unsold in Auction No. 44. These five additional licenses, as well as the other licenses to be offered in Auction No. 49, are identified in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice.* The *Auction No. 49 Revised License Inventory Public Notice* seeks comment on procedural issues related to the auction of the D block licenses. Also by the *Auction No. 49 Revised License Inventory Public Notice*, the Bureau revises the starting date for Auction No. 49 to May 28, 2003, in order to provide additional time for bidder preparation and planning.

2. The Bureau has before it a Request for Waiver of Auction Procedures and Section 1.2109 of the Commission's Rules filed on October 2, 2002, by Banks Broadcasting, Inc. (''Banks'') and a Petition to Promptly Resolve Waiver Request or Remove Four Licenses from Auction No. 49 Pending Resolution of Outstanding Waiver Request, filed by Banks on December 17, 2002. In these filings, Banks seeks to have the Bureau offer it four of the licenses listed in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*, based on high bids Banks formerly held on these licenses in Auction No. 44. The Bureau will respond to Banks's request in a separate Order.

The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz and 716–722 MHz Bands:

Block	Frequencies	Bandwidth (MHz)	Pairing	Geographic area type	Number of licenses
C	710–716, 740–746	12	2 × 6	MSA/RSA	251
D	716–722	6	unpaired	700 MHz EAG	5

Note: For Auction No. 49, licenses are not available in every market for the frequency blocks listed in the above table. See Attachment A of the *Auction No. 49 Revised License Inventory Public Notice* to determine which licenses will be offered.

II. Reserve Price or Minimum Opening Bid

3. For the five additional D block licenses offered in Auction No. 49, the Bureau proposes to use the same formula for calculating minimum opening bids as proposed in the *Auction No. 49 Comment Public Notice.* Specifically, for Auction No. 49, the Bureau has proposed the following license-by-license formula for calculating minimum opening bids:

$0.01 * MHz * License Area Population with a minimum of $1,000 per license.

A complete list of all licenses to be offered in Auction No. 49 and the proposed minimum opening bid for each is set forth in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice.* Comment is sought on this proposal. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act of 1997, the public interest would be served by having no minimum opening bid or reserve price.

III. Upfront Payments and Initial Maximum Eligibility for Each Bidder

4. For the five additional D block licenses offered in Auction No. 49, the Bureau proposes to use the same formula for determining upfront payments as previously proposed in the *Auction No. 49 Comment Public Notice.* Specifically, for Auction No. 49, the Commission has proposed the following license-by-license formula for calculating upfront payments:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license.

The specific upfront payment and bidding units for each license are set forth in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice.* The Bureau seeks comment on this proposal.

5. For the additional licenses offered in Auction No. 49, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility and the license was selected on the FCC Form 175. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

IV. Other Auction Procedural Issues

6. In the *Auction No. 49 Comment Public Notice,* the Bureau also set forth and sought comment on the following proposals relating to auction structure and bidding procedures: (i) Simultaneous multiple round auction design; (ii) activity rules; (iii) activity rule waivers and reducing eligibility; (iv) information relating to auction

delay, suspension or cancellation; (v) round structure; (vi) minimum acceptable bids and bid increments; (vii) high bids and tied bids; (viii) information regarding bid withdrawal and bid removal; and (ix) auction stopping rule. For the additional licenses in Auction No. 49, the Bureau proposes to use the same auction structure and bidding procedures proposed in the *Auction No. 49 Comment Public Notice.* The Bureau seeks comment on these proposals as they relate to the five additional licenses in the Lower 700 MHz band D block included in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice.*

V. Conclusion

7. Comments are due on or before February 12, 2003, and reply comments are due on or before February 19, 2003. The Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 49 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

8. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–3071 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–202, FCC 02–337]

Interstate Access Tariffs—Protections Against Risk of Uncollectibles

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This document makes recommendations to incumbent local exchange carriers (LECs) seeking to revise the deposit provisions of their interstate access tariffs to increase protection from the risk of uncollectibles. The document recommends that incumbent LECs consider whether the following possible tariff provisions might address the risk of uncollectibles, making additional deposits unnecessary: Revise interstate access tariffs to define the ''proven history of late payment'' trigger for requiring a deposit to include a failure to pay the undisputed amount of a monthly bill in any two of the most recent twelve months, provided that both the past due period and the amount of the delinquent payment are more than *de minimis;* reduce the notice period for refusal or discontinuance of service from 30 days to some shorter period for customers that receive bills quickly enough to allow review and dispute; accelerate billing cycles from 30 days to some shorter period to reduce exposure to pre-bankruptcy petition debt and other possible nonpayment; and bill in advance for usage-based services currently billed in arrears, based on average usage over a sample period, perhaps phasing in the first advance bill over a period of several months. The policy statement does not rule on the lawfulness of various tariffs proposed by incumbent local exchange carriers to increase protections against the risk of uncollectibles and being investigated by the Wireline Competition Bureau of the Federal Communications Commission.

FOR FURTHER INFORMATION CONTACT: Julie Saulnier, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Policy Statement in WC Docket No. 02–202 released on December 23, 2002. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background: On July 24, 2002, Verizon filed a Petition for Emergency Declaratory and Other Relief in response to the WorldCom bankruptcy. The Wireline Competition Bureau of the Federal Communications Commission sought comment on Verizon's petition. Public Notice, WC Docket No. 02–202, DA 02–1859 (rel. July 31, 2002). The petition asks the Commission, among other things, to permit carriers expeditiously to revise their tariffs to require deposits, advance payments, and shorter notice periods where necessary to provide adequate assurance of payment by their customers. The petition also asks the Commission to take certain actions in bankruptcy proceedings and regarding customer transfers that are not addressed in this item. Concurrently with its petition, Verizon filed revisions to its interstate access tariffs to broaden its powers to seek deposits and advance payments, and to shorten the notice period before refusing new orders, stopping existing orders, and discontinuing service to customers at risk of nonpayment. Similar tariff revisions have been filed by other incumbent LECs. While current tariffs allow incumbent LECs to seek deposits from customers with a history of late payment or no established credit, the revised tariffs would allow incumbent LECs to seek deposits from such customers, as well as any customer that suffers from impaired credit worthiness, defined in a variety of ways. After balancing the interest of incumbent LECs in protecting themselves from uncollectibles against the potential burden on their customers of additional deposits in a period of tight credit, the document recommends that incumbent LECs consider whether possible tariff provisions such as advance or accelerated billing, or shortened notice periods tied to timely arrival of accurate interstate access bills, might address the risk of nonpayment, making additional deposits unnecessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3070 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–01]

Hual As v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

HUAL AS (''Complainant'') has filed a complaint against the Puerto Rico Ports Authority (''Respondent''). Complainant states that its roll-on/roll-off (''RO/RO'') vessels call at ports and terminals operated by Respondent in San Juan, Puerto Rico, and that it leases port area land from Respondent. Although some of the vehicles Complainant discharges at San Juan are destined for Puerto Rico, most are discharged for subsequent transshipment throughout the Caribbean.

Complainant states that Respondent's marine terminal operator tariff sets forth wharfage rates for varying categories of commodities. Complainant states that the tariff provides: (1) That wharfage is assessed only on the inbound movement of cargo transferred from one vessel to another at Respondent's facilities without change in form or content; and (2) a 15-day free-time period for non-containerized cargo paying only incoming wharfage originally manifested for transshipment to other ports without change in form or content. Complainant states that the tariff does not set forth wharfage rates for transshipped motor vehicles.

Complainant asserts that Respondent has charged it wharfage for transshipped automobiles at a $6.0629 ''Motor Vehicle'' rate rather than at the $1.0860 ''Transshipment'' rate, and that Respondent charges it wharfage on both inbound and outbound movements. Complainant states that, because there is no specific rate in the tariff for transshipped automobiles, and given the tariff's rates for transshipped cargoes, the tariff's structure and language is vague and ambiguous and Respondent's practice of assessing the higher automobile wharfage rate against transshipped automobiles in contrast to other transshipped cargo is an unreasonable practice violative of section 10(d)(1) of the Shipping Act of 1984 (''Shipping Act''), 46 U.S.C. app. § 1909(d)(1). Complainant further contends that assessing the higher automobile rate against transshipped cargoes when the tariff establishes lower rates governing transshipped cargo generally confers unreasonable preference and advantage upon those shippers paying the lower tariff rate and unduly and unreasonably prejudices and disadvantages Complainant in violation of section 10(d)(4) of the Shipping Act, 46 U.S.C. app. § 1909(d)(4). Finally, Complainant asserts that Respondent's assessment of wharfage for inbound and outbound automobile movements is inconsistent with the express terms of its tariff and that Respondent has thus engaged in unreasonable practices violative of section 10(d)(1) of the Shipping Act, 46 U.S.C. app. § 1909(d)(1).

Complainant asks the Commission to issue an order finding Respondent to have violated sections 10(d)(1) and 10(d)(4) of the Shipping Act and directing Respondent to cease and desists from continued violations of the Shipping Act, including assessment of and pursuance of claims against Complainant for non-payment of disputed wharfage charges. Complainant also seeks recovery of the amounts it paid that exceed the governing tariff rate for transshipped cargo, reparations in amounts to be proved at trial, interest and reimbursement of attorneys' fees.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution, such as those described in Subpart U of the Commission's Rules of Practice and Procedure, 46 CFR §§ 502.401–502.411.

The hearing, if any, shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 30, 2004, and the final decision of the Commission shall be issued by June 1, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3016 Filed 2–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Meeting

TIME AND DATE: 10 a.m.—February 11, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED: The Portion Open to the public:

1. Docket No. 99–13—The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

2. Proposed Revisions to the Information Form and Monitoring Report Regulations for Carrier Agreements Under 46 CFR part 535.

1. The Portion Closed to the public: Proposed Revisions to the Commission's Regulations Regarding the Filing of Agreements Minutes Under 46 CFR part 535.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3102 Filed 2–6–03; 8:45 am]

BILLING CODE 6730–01–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 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Allen Tucker, Palm Beach, Florida; to acquire additional voting shares of Advantage Bankshares, Inc., North Palm Beach, Florida, and thereby indirectly acquire additional voting shares of Advantage Bank, North Palm Beach, Florida.

Board of Governors of the Federal Reserve System, February 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3010 Filed 2–6–03; 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 March 3, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of Granite Corporation, Granite Falls, North Carolina; to merge with First Commerce Corporation, Charlotte, North Carolina, and thereby indirectly acquire First Commerce Bank, Charlotte, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mechanics Banc Holding Company, Water Valley, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Mechanics Bank, Water Valley, Mississippi.

Board of Governors of the Federal Reserve System, February 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3009 Filed 2–6–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

President's Homeland Security Advisory Council

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The President's Homeland Security Advisory Council (PHSAC or Council) will meet telephonically in an open session on Friday, February 21, 2003, from 9:30 a.m. to 11 a.m., EST. The PHSAC will meet to deliberate on the draft Statewide Template for Homeland Security, prepared by the State and Local Senior Advisory Committee and, pending discussion, approve a draft letter to the President regarding the template.

Objectives: The President's Homeland Security Advisory Council was established by Executive Order 13260 (67 FR 13241, March 21, 2002). The objectives of the PHSAC are to provide advice and recommendations to the President of the United States through the Assistant to the President for Homeland Security on matters relating to homeland security.

Public Participation: This meeting will take place via teleconference through the following call-in number: 1–888–285–4585. Interested members of the public may listen to this meeting. To ensure the appropriate number of lines, however, persons wishing to listen to the meeting must register with Cynthia Gismegian at (202) 456–1700 by 4 p.m., EST, on Thursday, February 20, 2003, to obtain the access code.

Public Comments: Members of the public who wish to file a written statement with the PHSAC may do so by mail to Mr. Charles Howton at the following address: President's Homeland Security Advisory Council, U.S. General Services Administration (GSA/MC, Room G–230), 1800 F St., NW., Washington, DC 20405. Comments also may be sent to Charles Howton by e-mail at *charles.howton@gsa.gov,* or by facsimile (FAX) to (202) 273–3559.

Dated: February 5, 2003.

James L. Dean,

Director, Committee Management Secretariat, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 03–3254 Filed 2–6–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services (HHS), Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: *For information about how the poverty guidelines are used or how income is defined in a particular program,* contact the Federal (or other) office which is responsible for that program.

For general questions about the poverty guidelines (but NOT for questions about a particular program that uses the poverty guidelines), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–5880; persons with Internet access may visit the poverty guidelines Internet site at *http://aspe.hhs.gov/poverty.*

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, Health Resources and Services Administration, HHS, Room 16C–17, Parklawn Building,

5600 Fishers Lane, Rockville, Maryland 20857. To speak to a person, call (301) 443–5656. To receive a Hill-Burton information package, call 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland), and leave your name and address on the Hotline recording. Persons with Internet access may visit the Division of Facilities Compliance and Recovery Internet home page site at *http://www.hrsa.gov/osp/dfcr.* The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as INS Form I–864, Affidavit of Support, contact the U.S. Immigration and Naturalization Service. To obtain information on the most recent applicable poverty guidelines from the Immigration and Naturalization Service, call 1–800–375–5283. Persons with Internet access may obtain the information from the Immigration and Naturalization Service Internet site at *http://www.ins.usdoj.gov/graphics/howdoi/affsupp.htm.*

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain programs under the Workforce Investment Act of 1998), contact Haskel Lowery, Employment and Training Administration, U.S. Department of Labor—telephone: (202) 693–3608—e-mail: *hlowery@doleta.gov;* persons with Internet access may visit the Employment and Training Administration's Lower Living Standard Income Level Internet site at *http://wdsc.doleta.gov/llsil.*

For information about the number of people in poverty since 1959 or about the Census Bureau statistical poverty thresholds, contact the HHES Division, Room G251, Federal Office Building #3, U.S. Census Bureau, Washington, DC 20233–8500—telephone: (301) 763–3242—or send e-mail to *hhes-info@census.gov;* persons with Internet access may visit the Poverty section of the Census Bureau's Internet site at *http://www.census.gov/hhes/www/poverty.html.*

2003 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$8,980
2	12,120
3	15,260
4	18,400
5	21,540
6	24,680
7	27,820
8	30,960

For family units with more than 8 members, add $3,140 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

2003 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$11,210
2	15,140
3	19,070
4	23,000
5	26,930
6	30,860
7	34,790
8	38,720

For family units with more than 8 members, add $3,930 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

2003 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$10,330
2	13,940
3	17,550
4	21,160
5	24,770
6	28,380
7	31,990
8	35,600

For family units with more than 8 members, add $3,610 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 2003 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35—reauthorized by Pub. L. 105–285, Section 201 (1998)). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years. (The poverty guidelines are calculated each year from the latest published Census Bureau poverty thresholds—not from the previous year's guidelines. Besides the inflation adjustment, the figures are also adjusted to standardize the differences between family sizes.)

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of these poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).''

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Census Bureau to prepare its statistical estimates of the number of persons and families in

poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 2003 guidelines—reflect price changes through calendar year 2002, they are approximately equal to the poverty thresholds for calendar year 2002 which the Census Bureau expects to issue in September or October 2003. (A preliminary version of the 2002 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines). Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

While many programs use the guidelines to classify persons or families as either eligible or ineligible, some other programs use the guidelines for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and non-farm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of ''family,'' ''family unit,'' or ''household'' that is valid for all programs that use the poverty guidelines. Federal programs in some cases use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about its administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, please consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Census Bureau for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the Food Stamp Program and the Low-Income Home Energy Assistance Program, employ administrative variations of the ''household'' concept in determining income eligibility. A number of other programs use administrative variations of the ''family'' concept in determining income eligibility. Depending on the precise program definition used, programs using a ''family'' concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family Unit.* ''Family unit'' is not an official U.S. Census Bureau term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

Note that this notice no longer provides a definition of ''income.'' This is for two reasons. First, there is no universal administrative definition of ''income'' that is valid for all programs that use the poverty guidelines. Second, in the past there has been confusion regarding important differences between the statistical definition of income and various administrative definitions of ''income'' or ''countable income.'' The precise definition of ''income'' for a particular program is very sensitive to the specific needs and purposes of that program. To determine, for example, whether or not taxes, college scholarships, or other particular types of income should be counted as ''income'' in determining eligibility for a specific program, one must consult the office or organization administering the program in question; that office or organization has the responsibility for making decisions about the definition of ''income'' used by the program (to the extent that the definition is not already contained in legislation or regulations).

Dated: February 3, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 03–3018 Filed 2–6–03; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry

(Program Announcement 03012)

Public Health Conference Support Cooperative Agreement Program; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Public Health Conference Support published in the **Federal Register** on January 10, 2003, Volume 68, Number 7, and pages 1463–1467. The notice is

amended as follows: On page 1466, first column, under Section G. Submission and Deadline, paragraph one should read: For conferences May 15, 2003–September 30, 2004. Also on page 1466, first column, under Section G. Deadline, paragraph three, should read: If your conference dates fall between October 1, 2002 and May 14, 2003; and paragraph four, should read: May 15, 2003 to September 30, 2004.

Dated: January 31, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office Centers for Disease Control and Prevention.

[FR Doc. 03–3029 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee; Public Health Service Activities and Research at Department of Energy Sites

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES): the meeting originally planned for February 10, 2003, has been postponed until March 3, 2003.

The items originally scheduled for discussion on February 10th will be presented and discussed when the subcommittee meets in Oak Ridge on March 3, 2003.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42– ATSDR (28737), fax (404) 498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2003.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3028 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–27–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Exposure to Aerosolized Brevetoxins During Red Tide Events (OMB No. 0920–0494)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Gymnodinium breve is the marine dinoflagellate responsible for extensive blooms (called ''red tides'') that form in the Gulf of Mexico. *G. breve* produces potent toxins, called brevetoxins, that have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. CDC, National Center for Environmental Health is planning to recruit 100 people who work along the coast of Florida and who potentially will be occupationally exposed to aerosolized red tide toxins some time during the year following recruitment. We plan to administer a base-line respiratory health questionnaire and conduct pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide develops, we plan to administer a symptom survey and conduct pulmonary function testing (PFT) on a group of study participants who are working in the area where the red tide is near shore and on a control group of study participants who are not working in an area where the red tide is near shore (*i.e.*, are not exposed to the red tide). We will then compare (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results without exposure to red tide) with the changes in PFT values during the work shift when individuals are exposed to red tide.

In addition, we plan to assist in collecting biological specimens (inflammatory cells from nose and throat swabs) to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, inflammatory response) from exposure to red tide. We have collected part of the data, but, because we are dealing with natural phenomena and are subject literally to the tides, we must extend our data collection time for an additional two years. The estimated annualized burden is 206 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pulmonary History Questionnaire	20	1	20/60
Spirometry	20	20	20/60
Nasal and Throat Swabs	20	20	5/60
Symptom Questionnaire	20	20	5/60

Dated: January 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3024 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–25–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Data Collection on Attention Deficit Hyperactivity Disorder (ADHD)—New—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC). This project will collect data from proxy respondents on children ages 4 to 10 with and without ADHD. This program addresses the Healthy People 2010 focus area of Mental Health and Mental Disorders, and describes the prevalence, treated prevalence, select co-morbid conditions, secondary conditions, and health risk behavior of ADHD.

Background

The purpose of this program is to support research in ADHD and the exploration of other health conditions and health risk behaviors to children with the disorder. The main objectives of the project are to determine the prevalence or treated prevalence of children with ADHD in a defined community; to identify rates of select co-morbid or secondary conditions in children with ADHD in a defined community; to identify types and rates of health risk behaviors in children with ADHD; and to describe current and previous receipt of treatment in children with ADHD. The estimated annualized burden is 4,367 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
VADTRS/SDQ (Teacher Report)	1,350	1	6/60
Two-Question Previous Diagnosis and Treatment Screener (Parent)	22,000	1	1/60
Health Risk Behavior Survey (Parent Report)	2,500	1	10/60
Demographic Survey (Parent)	2,500	1	5/60

Dated: February 3, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3037 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03023]

Grants for Acute Care, Rehabilitation, and Disability Prevention Research; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Acute Care, Rehabilitation and Disability Prevention Research. This program addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, ''Program Requirements.''

2. Build the scientific base for the prevention and control of injuries, disabilities and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration.

The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this program announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Program Requirements.''

D. Funding

Availability of Funds

Approximately $1,800,000 is available in FY 2003 to fund approximately 6–9 awards. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $300,000 per year (including both direct and indirect costs) or $900,000 for a three year project period.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within the approved project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), the achievement of work plan milestones reflected in the continuation application, and the availability of funds.

Funding Priority

The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, ''Programmatic Requirements.''

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for accomplishing one of the following activities:

Research Activity 1: Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psycho social problems following injury.

Research Activity 2: Develop and apply methods that can be used to calculate population-based estimates of the incidence, costs, and long-term consequences of spinal cord injury (SCI) and non-hospitalized traumatic brain injury (TBI).

Research Activity 3: Identify methods and strategies to ensure that people with TBI and SCI receive needed services.

For more information on all 3 Research Activities, see Attachment 3 of this announcement as posted on the CDC Web site.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (see Attachment 4 of this announcement as it is posted on the CDC Web site). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda,'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff, regardless of their funding source. It should include their titles, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by, the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant, including future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the

application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 7, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of the PHS 398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time April 8, 2003. Submit the application to: Technical Information Management—PA03023, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the ''Eligible Applicants'' Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control(ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact. Factors to be considered will include:

a. Significance—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach—Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator—Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues—What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? Not scored; however an application can be

disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2, of this announcement, as posted on the CDC Web site). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples—Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination—What plans have been articulated for disseminating findings?

i. Measures of Effectiveness—The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.'' (See Attachment 2, Resource Materials, of this announcement, as posted on the CDC web site.)

d. Budgetary considerations.

3. Continued Funding.

Continuation awards made after FY 2003, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief summary 2,500 to 4,000 words written in non-scientific [laymen's] terms. The narrative should highlight the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding,'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Cheryl Maddux, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2759, E-mail address: *afx0@cdc.gov.*

For program technical assistance, contact:Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

BILLING CODE 4163–18–P

Attachment 1

Additional Requirements

AR–1

Human Subjects Requirements

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services (DHHS) Regulations (Title 45 Code of Federal Regulations Part 46) regarding the protection of human research subjects. All awardees of CDC grants and cooperative agreements and their performance sites engaged in human subjects research must file an assurance of compliance with the Regulations and have continuing reviews of the research protocol by appropriate institutional review boards.

In order to obtain a Federal wide Assurance (FWA) of Protection for Human Subjects, the applicant must complete an on-line application at the Office for Human Research Protections (OHRP) website or write to the OHRP for an application. OHRP will verify that the Signatory Official and the Human Subjects Protections Administrator have completed the OHRP Assurance Training/Education Module *before* approving the FWA. Existing Multiple Project Assurances (MPAs), Cooperative Project Assurances (CPAs), and Single Project Assurances (SPAs) remain in full effect until they expire or until December 31, 2003, whichever comes first.

To obtain a FWA contact the OHRP at: *http://ohrp.osophs.dhhs.gov/irbasur.htm* OR If your organization is not Internet-active, please obtain an application by writing to: Office for Human Research Protections (OHRP), Department of Health and Human Services, 6100 Executive Boulevard, Suite 3B01, MSC 7501, Rockville, Maryland 20892–7507.

Note: For Express or Hand Delivered Mail, Use Zip Code 20852

Note: In addition to other applicable committees, Indian Health Service (IHS) institutional review committees must also review the project if any component of IHS will be involved with or will support the research. If any American Indian community is involved, its tribal government must also approve the applicable portion of that project.

AR–2

Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register,** Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

AR–3

Animal Subjects Requirements

If the proposed project involves research on animal subjects, compliance with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions'' is required. An applicant (as well as each subcontractor or cooperating institution that has immediate responsibility for animal subjects) proposing to use vertebrate animals in CDC-supported activities must file (or have on file) the Animal Welfare Assurance with the Office of Laboratory Animal Welfare (OLAW) at the National Institutes of Health. The applicant must provide in the application the assurance of compliance number and evidence of review and approval (including the date of the most recent approval) by the Institutional Care and Use Committee (IACUC). Web page: *http://grants.nih.gov/grants/olaw*

AR–9

Paperwork Reduction Act

Under the Paperwork Reduction Act, projects that involve the collection of information from 10 or more individuals and funded by a grant or a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB).

AR–10

Smoke-Free Workplace Requirements

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote abstinence from all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, or early childhood development services are provided to children.

AR–11

Healthy People 2010

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of ''Healthy People 2010,'' visit the internet site: <http://www.health.gov/>healthypeople.

AR–12

Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their subtier contractors) are prohibited from using appropriated Federal Funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition no part of CDC appropriated funds shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or

any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the appropriated funds shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State or local legislature.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered ''lobbying.'' That is lobbying for or against pending legislation, as well as indirect or ''grass roots'' lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals is prohibited. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation or prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation.

It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and ''grassroots'' activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activiites in a manner that is prohibited under Federal law.

AR–13

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act specifies that; ''None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.'' Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the language in the CDC's Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

AR–21

Small, Minority, and Women-Owned Business

It is a national policy to place a fair share of purchases with small, minority and women-owned business firms. The Department of Health and Human Services is strongly committed to the objective of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. In particular, recipients should:

1. Place small, minority, women-owned business firms on bidders mailing lists.

2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.

3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.

4. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar state and local offices.

AR–22

Research Integrity

The signature of the institution official on the face page of the application submitted under this Program Announcement is certifying compliance with the Department of Health and Human Services (DHHS) regulations in Title 42 Part 50, Subpart A, entitled ''Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in science.''

The regulation places several requirements on institutions receiving or applying for funds under the PHS Act that are monitored by the DHHS Office of Research Integrity's (ORI) Assurance Program.

For examples: Section 50.103(a) of the regulation states: ''Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary (DHHS) that the applicant: (1) Has established an administrative process, that meets the requirements of this subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and (2) Will comply with its own administrative process and the requirements of this Subpart.''

Section 50.103(b) of the regulation states that: ''an applicant or recipient institution shall make an annual submission to the [ORI] as follows: (1) The institution's assurance shall be submitted to the [ORI], on a form prescribed by the Secretary, * * * and updated annually thereafter * * * (2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.''

An additional policy is added in the year 2000 that ''requires research institutions to provide training in the responsible conduct of research to all staff engaged in research or research training with PHS funds.

Attachment 2

Definitions

1. Individual injury research projects (R49's) are defined as research designed to:

a. Elucidate the chain of causation—the etiology and mechanisms—of injuries and subsequent disabilities.

b. Yield results directly applicable to identifying interventions to prevent injury occurrence or minimize disability

c. Evaluate the effect of known interventions on injury morbidity, mortality, disability, and costs.

2. Injury is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment, or to chemical agents, or the acute lack of oxygen. Excluded from this definition of injury are cumulative trauma disorders, musculoskeletal disorders of the back not caused by acute trauma, and effects of repeated exposure to chemical or physical agents. The three phases of injury control are defined as prevention, acute care, and rehabilitation. The major categories of injury are intentional, unintentional, and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, child abuse and neglect (includes child sexual abuse), intimate partner violence, elder abuse, and sexual assault. Unintentional injuries include those that result from motor vehicle collisions, falls, fires, poisonings, drownings, recreational, and sports-related activities. Occupational injuries occur at the worksite and include unintentional trauma (for example, work-related motor-vehicle injuries, drownings, and electrocutions), and intentional injuries in the workplace.

Resource Materials

1. National Center for Injury prevention and Control. CDC Injury research Agenda. Atlanta (GA): Centers for Disease Control and Prevention; 2002. Internet Address: *http://www.cdc.gov/ncipc/pub-res/research_agenda/index.htm.*

2. Reducing the Burden of Injury: Advancing Prevention and Treatment. Institute of Medicine, National Academy Press, 1999. 2101 Constitution Avenue, NW. Washington, DC 20418. Cost: $27.96 Telephone 202–334–3313 Internet Address: *http://www.nap.edu/catalog/6321.html.*

Attachment 3

Research Activities

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psycho social problems following injury.

Clinical preventive services for patients treated in emergency departments (ED), hospital trauma units, and other acute care settings can help reduce the risk of injury and mitigate the effects of injuries that do occur. Such services might include instruction in the proper use of safety restraints and screening and interventions for alcohol problems, intimate partner violence, or child abuse. For injured patients, ED visits and inpatient hospital admissions for trauma care may provide crucial opportunities for early identification of and intervention for post-traumatic stress disorder and other psycho social problems that can follow or be exacerbated by injury.

Decision makers are often reluctant to fund preventive clinical services because they believe the investment needed to implement a single service in one clinical setting is too high. Research should demonstrate the effectiveness and value of such services and examine ways to implement multiple services simultaneously to amortize operational costs. Medical staff from the clinical setting should be actively involved in carrying out this research.

2. Develop and apply methods that can be used to calculate population-based estimates of the incidence, prevalence, costs, and long-term consequences of SCI and non-hospitalized TBI.

Development and validation of methods is needed to assess and describe both the spectrum of outcomes following ''mild'' TBI and the magnitude of those outcomes. Such methods are lacking for some subgroups of people with TBI, particularly those with ''mild'' TBI. Research should focus on increasing uniformity of case identification methods to improve the comparability of national-level data for people with TBI. Considering available resources and the language in the TBI Act Re-Authorization for 2000, case identification for people with ''mild'' TBI, including those who do not receive medical care, should receive highest priority.

The NCIPC conducts population-based surveillance to develop nationally representative estimates of the incidence, prevalence, nature, and causes of injuries that result in long-term disability. This activity includes conducting population-based follow-up studies to identify and track the long-term outcomes of disabling injuries. Research should investigate the unique outcomes and special needs of specific subgroups of TBI and SCI populations, such as those violently injured. Better information about outcomes could improve estimates of the true burden of disability for individuals with ''mild'' TBI by helping to document long-term problems resulting from these injuries. These improved estimates should also include screening persons for previous history of TBI, including ''mild'' TBI. Research should also identify the service needs of people with TBI and SCI, providing useful information for injured persons, service providers, and policy makers.

The direct medical costs and indirect costs associated with disabling injuries are not well documented; however, this information is important to guide decisions about resource allocation and other policies. For TBI, the study most often cited was published 10 years ago. Research should provide comprehensive, up-to-date information about the direct and indirect costs of TBI and SCI. In addition, research should estimate the costs associated with secondary conditions, e.g., pressure sores, depression, and alcohol abuse.

3. Identify methods and strategies to ensure that people with TBI and SCI receive needed services.

People disabled by an injury often do not receive the help they need. A CDC-funded follow-up study of TBI in Colorado found that one year after injury, about one third of people with a disability said they had not received any services since their discharge from the hospital. According to a 1998 General Accounting Office report, people who have cognitive or behavior problems, but not physical problems, resulting from TBI are among those most likely to have unmet service needs. Without treatment, people with behavior problems are the most likely to become homeless, be committed to mental institutions, or be sentenced to prison. A recent study showed that people with TBI who received the services they needed reported a better quality of life. Research should increase understanding of the gaps between needed and available services for people with TBI and SCI and should identify strategies to close those gaps. Development and validation of methods are needed to better identify persons with the mildest forms of central nervous system injury (including ''mild'' TBI) and to explore the possibility of using these identification methods to link these injured persons with services.

People with ''mild'' TBI may not even be diagnosed with a TBI, making it even more difficult for them to get assistance. Research should explore the possibility of adapting case identification methods to help link people with TBI and SCI to services. To that end, the Injury Center has already funded two small, pilot projects to investigate the feasibility of using state-based TBI surveillance to identify people hospitalized with TBI who may need help finding out about services. Studies should investigate specific methods for linking people to information and services, such as evaluating the usefulness of toll-free telephone numbers that serve as single points of entry to the service delivery system. Studies should also describe the spectrum of rehabilitation services and trends in service provision, and they should evaluate access to medical, rehabilitation, and social services to prevent disabling outcomes and secondary conditions.

Attachment 4

Errata Sheet

Special Instructions for PHS–398, Rev. 11/2002

Announcement # PA Title

Section I—Preparing Your Application

B. General Instructions (Page 3)

Use English only and avoid jargon and unusual abbreviations. Type the application.

Format Specifications

The Content section of the Program Announcement refers to ''the narrative.'' The narrative should consist of items listed in the program announcement. Use only standard size fonts in black print that can be photocopied and easily read, do not use photo reduction or compressed print. Draw all graphs, diagrams tables, and charts in black ink. Do not include photographs, oversized documents, or materials that cannot be photocopied in the body of the application.

The ONLY item that should be used to keep the application together is a rubber band. Please do not use spiral binders, 3-ring notebooks, envelopes, binder clips, etc.

Do not submit an incomplete application. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions, or if the material presented is insufficient to permit an adequate review. Unless specifically required by these instructions (e.g., human subjects certification, vertebrate animals verification, changes in other support), do not send supplementary or corrective material pertinent to the application after the receipt date without its being specifically solicited or agreed to by prior discussion with the Grants Management Specialist.

Page Limitations and Content Requirements (Page 4)

Disregard Page Limit under Research Plan, Sections a-d and adhere to the prescribed guidance in the Program Announcement.

C. Specific Instructions

Budget Instructions (Page 11)

CDC does not use the modular budget format. Disregard instructions regarding the dollar limitations. PHS 398 Form Page 4 and Form Page 5 are required to be submitted by all applicants regardless of the dollar amount requested.

Human Subject Research (Section 8.e., Pages 18–19)

Ensure that the application addresses the issue of Women and Minority Inclusion in Research Involving Human Subjects. The application could be determined as non-responsive if this issue is not covered within the research plan.

Section II—Submitting Your Application

Send the Application to the following address: Technical Information Management–PA#, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341–4146. *Please do not send the application to the National Institutes of Health.*

Disregard all instructions under Section A. INSTRUCTIONS (Page 31)

Disregard Sections B–D (Pages 34–35). Please refer to the Program Announcement, ''Evaluation Criteria'' section, for the applicable CDC review process.

Disregard Section M, First Paragraph (Pages 53–54); Section N (Pages 54–55) and Section O (Pages 55–56); and all pages following Page 56.

[FR Doc. 03–3035 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03033]

Grants for Dissemination Research of Effective Interventions To Prevent Unintentional Injuries; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280b(a)) of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the ''Programmatic Requirements.''

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions and institutes, hospitals, managed care organizations, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury prevention and dissemination research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury prevention and dissemination research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, ''Program Requirements.''

D. Funding

Availability of Funds

Approximately $450,000 is available in FY 2003 to fund two awards for this grant program. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $225,000 (including both direct and indirect costs) per year or $675,000 for a three-year project period.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards made after FY 2003, but within the approved project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Types of Research

The focus of dissemination research sought in this solicitation is to determine what methods and factors influence the successful adoption of safety practices or safety policies by individuals, organizations, or institutions. Dissemination research examines strategies for promoting uptake, widespread adoption and maintenance of effective interventions and programs. Interventions are defined as systematic mechanisms or specific strategies designed to change the knowledge, attitudes, beliefs, behaviors, or practices of individuals and populations in order to reduce risk and improve health their health risk. Effective interventions are defined as interventions that have credible scientific evidence of effectiveness. Evidence of effectiveness (for an intervention) refers to the results from a completed study that has been evaluated by appropriate statistical methods, through research with control or comparison groups with whom pre- and post-intervention behavioral outcomes are measured, and found to have significantly influenced the adoption of safer behaviors or the reduction of risky behaviors. Uptake refers to the process in which an individual or population perceives a need for change, acquires information about interventions, assesses the fit between their need and the interventions, makes a selection, and prepares relevant others for implementation of the intervention. This program announcement is not intended to support just dissemination of effective programs without research on the process or outcomes, nor is it intended to support program development or replication studies. Studies can focus on methods to encourage practitioners and policy makers to adopt science-based programs, policies and laws that reduce unintentional injuries. Studies can also examine factors that increase or impede the individual adoption or organizational and community capacity for implementing and sustaining effective interventions.

Dissemination research can vary in its application in several ways. At the level of the individual, family or small group, a safety innovation typically involves changes in behaviors or lifestyle practices so that uptake and implementation of the innovation may be achieved. At the organizational level, such as the workplace, school or managed care organization, successful uptake may require the introduction of new programs, or changes in policies, enforcement, or management support. At a broader community level, facilitation of uptake may require a planned dissemination process. Dissemination activities might include the targeted use of mass media or the planned use of peer leaders to promote the development of new health standards that many in the community will endorse. Also, policy or legislative change may be relevant.

The following are the research themes of this solicitation:

1. Product-related dissemination research. Where there are effective safety products available that are not being sufficiently used (*e.g.,* bicycle helmets or hip pads for hip fracture prevention in a fall), achieving satisfactory diffusion of the innovation (whether at the individual, social or organizational level) requires an understanding of the barriers and facilitators for change, and mechanisms for overcoming resistance to change, including in the marketplace.

2. Social marketing-related dissemination research. Where effective interventions are being used successfully in one locale, but their diffusion throughout the culture is non-existent or slow, social marketing strategies may be effective to influence social norms and accelerate widespread adoption. It may be useful to select or target people and institutions at various stages in their willingness to change, such as early adopters, late adopters, and those who lag behind in adopting any innovation. Select methods may be necessary to reach and influence these audiences, such as those who are first contemplating the possibility of change or those who already intend to change but have not yet done so. Also, it may be useful to identify communication channels and systems to support legislation or other activities that promote widespread adoption. For any dissemination or diffusion activity, recruiting early adopters to assist in these efforts might provide role models for others and prove useful to enhance uptake of the intervention.

Examples

To assist the preparation of the application, note the following are examples where there is evidence of effective interventions and for which dissemination research is needed:

1. Increasing the use of bicycle helmets among adolescents.

2. Reducing fall-related injuries among older adults (exercise programs, medication review programs, hip protectors).

3. Reducing injuries due to residential fires.

4. Increasing the use of safety belts by high risk groups.

5. Reducing alcohol-impaired driving.

6. Increasing the use of booster seats.

7. Reducing young driver crash risks.

(Additional examples of effective strategies and several theory-based frameworks for dissemination and diffusion research can be found in Attachment 3, ''Resources,'' of this announcement as posted on the CDC Web site.)

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (*see* Attachment 4 of this announcement as posted on the CDC Web site), and the narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 4 p.m. eastern time April 8, 2003. Submit the application to: Technical Information Management—PA03033, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applications

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the ''Eligible Applicants'' section (items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, (*e.g.*, suspected child abuse)? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (*see* Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for sharing the research findings?

i. *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each *see* Attachment 1 of the application kit, as posted on the CDC Web site.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirement

AR–9 Paperwork Reduction Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–21 Small, Minority, and Women-owned Business

AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov.*

Click on ''Funding,'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2700.

For business management and budget assistance, contact: Van King, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2751. E-mail address: *vbk5@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–02, Atlanta, GA 30341–3724.

Telephone: (770) 488–4823. E-mail address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3025 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03024]

Grants for Violence-Related Injury Prevention Research: Intimate Partner Violence and Sexual Violence; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391(a) [42 U.S.C. 280b(a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Intimate Partner Violence and Sexual Violence Injury Prevention Research. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the ''Programmatic Requirements.''

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods, to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Program Requirements.''

D. Funding

Availability of Funds

Approximately $1,200,000 is expected to be available in FY 2003 to fund approximately 4–6 awards for intimate partner violence and sexual violence research grants. It is expected that the awards will begin on or about September 1, 2003, and will be made for

a 12-month budget period within a three-year project period. The maximum funding level will not exceed $300,000 (including both direct and indirect costs) per year and $900,000 for the three-year project period. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, ''Programmatic Requirements.''

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees that submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of violence, its causes, and prevention strategies.

The following research themes are the focus of this investigator-initiated solicitation:

1. Evaluate strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence and sexual violence.

2. Evaluate the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence and sexual violence.

3. Identify shared and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

Additional information may be found for all attachments as posted with this announcement on the CDC Web site: *http://www.cdc.gov.*

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (See Attachment 4 of this announcement). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and

Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time April 8, 2003. Submit the application to: Technical Information Management-PA03024, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications, which do not meet the above criteria, will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the ''Eligible Applicants'' Section (Items one through five). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples. Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the

research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination. What plans have been articulated for disseminating findings?

i. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (See attachment). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review, will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). The ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2003, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of this announcement as posted on the CDC web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding,'' then ''Grants and Cooperative Agreements.''

For business management assistance, contact: Angie Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: *aen4@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, Internet address: *TVoglesonger@cdc.gov*.

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3034 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03036]

Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391 (a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the ''Programmatic Requirements.''

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths disproportionately experienced in minority communities.

3. Encourage doctoral candidates from a wide spectrum of disciplines, including, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences, to perform research in order to prevent and control injuries more effectively.

4. Assist students in the completion of their dissertation research on a violence-related topic.

5. Encourage investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths in minority communities.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair or another member of the dissertation committee). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. This research initiative is aimed at providing students with assistance to complete their dissertation research on a violence-related topic and, thereby, increasing representation of junior investigators in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, more than 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitutes an enormous public health problem. For every homicide that occurs each year there are more than 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child mistreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed who bring an understanding and sensitivity to the problems of violence as they affect minority communities. The purpose of this extramural research training grant program is to attract young scientists to the field of violence prevention by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. This research program should also attract young minority scientists to the field of violence research.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Assistance will be provided to any United States public or private institution. The institution must support an accredited doctoral level training program. The performance site must be domestic.

Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the ''Research Objectives'' in the Program Requirement's section of this announcement. To receive this funding, applicants must have successfully defended their dissertation proposal. This must be verified in a letter of certification from the mentor (the chair or another member of the dissertation committee). CDC requests that, if available, the letter of certification be submitted with the grant application, or before the negotiation and award.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has the skill and academic training to conduct the proposed research, and the specific authority to carry out the proposed project.

2. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

3. The ability to carry out injury-control research projects as defined under Attachment 2 (1.a–c) as posted on the CDC web site at *www.cdc.gov.*

4. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Program Requirements''.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funds

Availability of Funds

Approximately $100,000 is expected to be available in FY 2003 to five fund approximately five dissertation awards for doctoral candidates. It is expected that the average awards will begin on or about September 1, 2003, and will be made for a 12-month budget and project period. The project period may be extended without additional funds for up to a total of 24 months. The maximum funding level will not exceed $20,000 (including both direct and indirect costs). Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Use of Funds

Training grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, dissertation printing costs, and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

2. Evaluating the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

3. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

Other Special Conditions for Dissertation Research Grants

1. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.

2. The responsible program official for CDC must be informed if there is a change of a mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.

3. A dissertation research training grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

4. Two copies of the completed dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.

5. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation training grant.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to plan the review more effectively and efficiently, and should include the following information: A brief description of the scope and intent of the proposed research work.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 pages, single-spaced, printed on one side, with one inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (*See* attachment 3 of this announcement as posted on the CDC Web site). The narrative should consist of the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three–five years from project start-up.

Additional Required Materials

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which:

a. Fully identifies the members of the dissertation committee.

b. Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (Letters certifying approval of the dissertation proposal must be received before negotiation and award of the grant.)

c. Certification that the institution's facilities and general environment are adequate to conduct the proposed research.

2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.

3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required course work for the degree with the exception of the dissertation.

4. A statement of the applicant's career goals and intended career trajectory.

5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

G. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by March 4, 2003. Submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission, Date, Time and Address

The application must be received by 4 p.m. Eastern Time May 8, 2003. Submit the application to: Technical Information Management—PA # 03036, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be sent electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the ''Eligible Applicants'' Section (Items one through four). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's narrative reflects the project's focus, because the narrative will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2).

This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences if the proposed research is an intervention study.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples. Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination. What plans have been articulated for disseminating findings?

i. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS)of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, project narratives, strengths and weaknesses from summary statements, and project officer's briefing materials). The ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. The dissertation, including abstract that will constitute the final Interim Progress Report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a short (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the **Where To Obtain Additional Information** section of this announcement.

Additional Requirements:

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of this

announcement as posted on the CDC web site.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirement

AR–9 Paperwork Reduction Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–21 Small, Minority, and Women-owned Business

AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov.* Click on ''Funding,'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management assistance, contact: Nancy Pillar, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, E-mail address: *nfp6@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3033 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03028]

Grants for Traumatic Injury Biomechanics Research; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391 (a) [42 U.S.C. 280b (a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for Grants for Traumatic Injury Biomechanics Research. This program addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, ''Programmatic Requirements.''

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non responsive to the following requirements will be returned to the applicant without further consideration:

1. A principal investigator, who has conducted research, published the findings in peer-reviewed journals, and have specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this program announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives and the program interests as described under the heading, ''Program Requirements.''

D. Funds

Availability of Funds

Approximately $600,000 is available in FY 2003 to fund approximately two-three awards. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

The maximum funding level for each project will not exceed $300,000 per year (including both direct and indirect costs) or $900,000 for a three-year project period. Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.
2. The objectives for the new budget period are realistic, specific, and measurable.
3. The methods described will clearly lead to achievement of these objectives.
4. The evaluation plan will allow management to monitor whether the methods are effective.
5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Funding Priority

Interested persons are invited to comment on the proposed funding priority (see the ''Program Requirements'' section of this announcement). All comments received within 30 days after publication in the Federal Register will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the Federal Register, and revised applications will be accepted before the final selections are made. Address comments to the grants management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

NCIPC works to prevent non-occupational unintentional and violence-related injuries, and to minimize the consequences of injuries when they do occur. It's public health approach draws on biomechanics in seven topic areas:

1. Preventing Injuries at Home and in the Community.
2. Preventing Injuries in Sports, Recreation, and Exercise.
3. Preventing Transportation Injuries.
4. Preventing Intimate Partner Violence, Sexual Violence, and Child Maltreatment.
5. Preventing Suicidal Behavior.
6. Preventing Youth Violence.
7. Acute Care, Disability, and Rehabilitation.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for addressing priorities listed below:

High Priority

Higher priority will be given to research proposals that:

1. Use biomechanics research and the knowledge of injury tolerance and injury mechanisms to develop and/or evaluate interventions that address the following specific injury prevention and control problems:
   a. Falls that occur among older, community dwelling adults (*e.g.* hip pads).
   b. Injuries in mass trauma events.
   c. Severe and disabling falls among children.
   d. Sports, recreation, and exercise-related injuries (*e.g.*, playground and other play environments, safety gear.)
   e. Injuries associated with people initiating or increasing physical activity (*e.g.*, training programs or protective devices).
   f. Injuries related to outdoor recreation (*e.g.*, vehicle design).
   g. Motorcycling, bicycling and pedestrian injuries (*e.g.*, improved helmets or environments).
   h. Injuries to child occupants of motor vehicles (*e.g.*, universal fasteners and alternative restraint designs).
   i. Injuries to older drivers.
   j. Injuries associated with the effects of emerging vehicle technologies.
2. Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions.

Note: The scoring for applications addressing a high priority item will be weighted an additional 25 points in a scoring system of 100–500 points.

Lower Priority

In addition, lower priority will be given to research proposals that:

1. Advance the biomechanical understanding of traumatic injury (*e.g.*, injuries to the brain, spinal cord, thorax/abdomen, extremities and joints) including: development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.*, brain and vertebral injury with spinal cord involvement).
2. Define the human tolerance limits for injury, especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.
3. Identify the modifiable risk factors for and mechanisms of nonfatal neck, back and soft tissue (''whiplash-like'') injuries.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and

Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (See attachment 3 of this announcement as it is posted on the CDC web site). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda,'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as the portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003. Submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–398 (OMB Number 0925–0001). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Standard Time, April 8, 2003. Submit the application to: Technical Information Management-PA#03028, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

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judged likely to have a major scientific impact. Factors to be considered will include:

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This includes:

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(2) The proposed justification when representation is limited or absent.

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(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

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d. Budgetary considerations.

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1. *Annual progress report.* The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in nonscientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders

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Executive Order 12372 does not apply to this program.

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For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Steve Lester, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–1998, E-mail address: *svl3@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3032 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03027]

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Acute Care, Disability, and Rehabilitation-Related Research

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) (42 U.S.C. 241(a)) of the Public Health Service Act, and section 391 (a) (42 U.S.C. 280b (a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for new investigator training awards in four research areas: unintentional injury prevention, violence-related injury prevention, injury-related acute care and disability research, and injury-related biomechanics research. This program addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention.

The purposes of this program are to:

1. Solicit research applications that address the priorities reflected under the ''Program Requirements'' section.

2. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

3. Support injury research by recent doctoral-level graduates or researchers who are redirecting their careers toward injury research.

4. Build the scientific base for the prevention and control of unintentional and violence-related injuries, disabilities, and deaths.

5. Encourage qualified applicants who are beginning or redirecting their career to focus on injury-related research. The career development objectives of this program are to encourage scientists to develop independent research skills and to gain experience in advanced methods and experimental approaches in injury-related research. This program is also intended to jump start the careers of researchers in injury prevention and control by providing support for pilot studies, enhancements to existing studies, or other studies that will serve as a foundation for a career in injury prevention and control. Applicants are required to seek mentoring or collaboration for their research with more senior-level injury researchers.

Measurable outcomes of the program will be in alignment with the performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

Background and Significance

1. Unintentional Injury Prevention Research

For the purposes of this RFA, unintentional injuries are defined as unintentional damage to the body resulting from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of such essentials as heat or oxygen. Unintentional injuries continue to be a major public health problem. In 1999, nearly 98,000 people died in the United States as a result of unintentional injuries. Someone dies in this country every six minutes from an injury that is within a category of injuries that includes: motor vehicle crashes, falls, poisonings, drowning, fires and burns, pedestrians struck by motor vehicles, bicycle crashes, or suffocation. In addition to deaths, injuries also constitute a significant cause of both permanent and temporary disability. In 2000, unintentional injuries resulted in nearly 30 million emergency department visits and millions more visits to physicians' offices. Although the greatest cost of injury is human pain and suffering, the financial costs also are staggering: over 200 billion dollars annually for medical care, wage and productivity losses and employer costs in 1998.

2. Violence Related Injury Prevention Research

Deaths and injuries associated with interpersonal violence and suicidal behavior are also a major public health problem in the U.S. and around the world. In 1999, over 46,000 people died from homicide and suicide in the U.S. Among 15 to 24 year olds, homicide and suicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 nonfatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity resulting from violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

3. Injury Related Acute Care, Disability, and Rehabilitation

Each year, Americans make between 30 and 40 million emergency department (ED) visits for injuries. While most injured patients are treated and released, many are admitted to inpatient trauma units and later receive rehabilitative services. The most favorable outcomes are achieved when acute care and subsequent rehabilitation are as early as possible and focus on returning patients to baseline or to an optimal level of functioning. Trauma systems are designed to match trauma patients with the acute care and rehabilitative facilities they need, but in many parts of the U.S. trauma systems are not fully operational or are nonexistent. Also, as many as 30 to 40 percent of deaths among trauma patients are due to preventable problems in clinical care, including missed diagnoses and treatment delays.

Injuries are a major cause of disabilities in the U.S. Central nervous system injuries (those to the brain and spinal cord) are most likely to result in serious long-term disability. Each year, an estimated 80,000 Americans sustain a traumatic brain injury (TBI) that results in disability; an estimated 5.3 million Americans live with TBI-related disability. Although physical impairments from the injury may contribute to TBI disability, cognitive deficits are the hallmark, frequently resulting in secondary conditions such as depression and other adverse outcomes such as the inability to work. An estimated 177,000 to 200,000 people in the U.S. live with spinal cord injuries (SCI), and this number increases annually by as many as 20,000 individuals.

4. Biomechanics

The field of biomechanics quantifies the response and tolerance of the human body to impact (*e.g.*, motor vehicle collisions, playground falls, and child battering) and addresses the underlying mechanisms of injury, the forces deforming the body and the physiologic effects of injury to infants, children, adults and the aged population. Based on interdisciplinary research, the engineering factors are determined that deform the body and the medical consequences are quantified that affect vital functions. This knowledge is used to modify the design of protective systems to improve safety. Improved safety systems protect an individual from impact forces that can injure, and they can include protective equipment (cycling helmets) and environments (playground surfaces), occupant restraints (airbags and safety belts), and policies (rules to minimize spearing in football). Biomechanical knowledge can also be used to improve post-injury outcomes through physiologic models to address emergency medical treatments, pharmacologic interventions and rehabilitation to advance recovery.

An overview of the role of biomechanics in a national effort for injury control was included in the landmark NAS study ''Injury in America: A Continuing Public Health Problem-Committee on Trauma Research'' (Commission on Life Sciences, National Research Council and the Institute of Medicine, National Academy Press, Washington, DC, 1985). The role is described in more detail in a follow-on paper from the NAS study: Injury Biomechanics Research: An Essential Element in the Prevention of Trauma (Viano DC, King AI, Melvin JW, Weber K. Journal of Biomechanics, 22(5): 403–417, 1989).

This program attempts to build on the basic knowledge of biomechanics and encourage interdisciplinary intervention-oriented injury control research as supported in the ''CDC Injury Research Agenda'' (See Attachment 2 as posted on the CDC Web site).

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities and colleges (including but not limited to schools or departments of public health, medicine, nursing, criminal justice, bioengineering, or the behavioral or social sciences,) technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants must be within three years of having completed their doctoral or equivalent graduate work (including dissertation, where appropriate), or redirecting their research to injury-related research. Documentation of such redirection such as letters indicating recent substantive involvement in injury research or injury-related publications must be included in the application. Applicants who have been the principal investigator on a Public Health Service (PHS) injury-related research grant or who have had equivalent injury-related research support from an existing Injury Control Research Center (ICRC) are not eligible. Exceptions are researchers who have redirected their research areas from one area of injury research, *e.g.*, acute care or biomechanics, to another area, *e.g.*, violence prevention research. Recipients of dissertation research grants or National Institutes of Health (NIH) Small Grant Awards are eligible to apply.

Applications that are incomplete or non-responsive to the following requirements will be returned to the applicant without further consideration:

1. A principal investigator who has specific authority and responsibility to carry out the proposed project.

2. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

3. The ability to carry out injury control research projects as defined under Attachment 2 (1. a–c) as posted on the CDC website.

4. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Program Requirements''.

5. Mentorship as noted in the letter of support and commitment of mentor's time.

D. Funding

Availability of Funds

Approximately $400,000 is available in FY 2003 to fund approximately four awards. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month project period. Grants will be awarded for 12 months, but may be extended without additional funds for up to a total of 24 months. The maximum funding level for each project will not exceed $100,000 (direct and indirect costs) per year. Funding estimates may change.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of federal funding may vary and is subject to change.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Use of Funds

The use of funds for applicant include, partial salary and tuition support; direct research project expenses, such as trainee stipends, interviewer costs, data processing, participant incentives, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified. Applicants should also include travel costs for one, two-day trip to CDC in Atlanta to present research findings. Funds for tuition support are limited to no more than 20 percent of the overall award and their use must be generally related to the content and methods of the proposed research. Indirect cost for these trainee-related activities are limited to eight percent.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Applicants are encouraged to propose studies that can feasibly be completed within the available funds and funding period.

Research Objectives

For the purpose of this Program Announcement, highest consideration will be given to research that addresses one of the following research areas and subtopics:

Violence

1. Evaluation of strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence or suicidal behavior.

2. Evaluation of the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior.

3. Identification of shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior, and examine the relationships among these forms of violence.

Unintentional Injury

1. Development of strategies that encourage practitioners and policy makers to adopt science-based programs, policies, laws, and regulations that reduce unintentional injuries.

2. Identification of modifiable behavioral responses to a residential fire and evaluating the effectiveness of evacuation strategies in fire emergencies and mass trauma events.

3. Among children, determination of the immediate causes of the most severe and disabling types of falls, or evaluating interventions that prevent serious falls in children.

4. Development of interventions that utilize applied behavioral analysis, behavioral safety, or other behavior modification strategies to change injury risk behaviors in non-occupational settings.

5. Development and implementation of interventions to increase motor vehicle safety in older adult drivers.

6. Evaluation of the effectiveness of implementing new innovative strategies to reduce alcohol-impaired driving.

7. Evaluation of the effectiveness of environmental, engineering or behavioral interventions to prevent pedestrian injury.

8. Methodological research to better define and measure aspects of supervision and its relative effectiveness in preventing injuries

Acute Care, Disability, and Rehabilitation

1. Development and evaluation of protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury.

2. Development and application of methods that can be used to calculate population-based estimates of the incidence, costs, and long-term consequences of spinal cord injury (SCI) and nonhospitalized traumatic brain injury (TBI). Identification of methods and strategies to ensure that people with TBI and SCI receive needed services.

Biomechanics

1. Use of biomechanics research and the knowledge of injury tolerance and injury mechanisms for the development and evaluation of interventions that address the following specific injury prevention and control problems:

a. Falls among older, community dwelling adults (*e.g.*, hip pads).

b. Injuries in mass trauma events.

c. Severe and disabling falls among children.

d. Sports, recreation, and exercise related injuries (*e.g.*, playground and other play environments, safety gear).

e. Injuries associated with people initiating or increasing physical activity (*e.g.*, training programs or protective devices).

f. Injuries related to outdoor recreation (*e.g.*, vehicle design).

g. Motorcycling, bicycling and pedestrian injuries (*e.g.*, vehicle design).

h. Injuries to child occupants of motor vehicles (*e.g.*, universal fasteners and alternative restraint designs).

i. Injuries to older drivers.

j. Injuries associated with the effects of emerging vehicle technologies.

2. Development of more basic biomechanical information that is needed to identify biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment and improve case definitions.

3. Advancement of the biomechanical understanding of traumatic injury (*e.g.*, injuries to the brain, spinal cord, thorax/

abdomen, extremities and joints) including the development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.*, brain and vertebral injury with spinal cord involvement).

4. Definition of the human tolerance limits for injury, especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.

5. Identification of the modifiable risk factors for and mechanisms of nonfatal neck, back, and soft tissue (whiplash-like) injuries.

Other Special Conditions for New Investigator Research Grants

1. The applicant must be the designated principal investigator. The principal investigator must be responsible for planning, directing, and executing the proposed project. The applicant must include a signed letter indicating that he or she personally wrote the application.

2. The applicant must specify which of four areas the proposal addresses: (a) Unintentional injury; (b) violence-related injury research; (c) injury-related acute care, disability, and rehabilitation; or (d) biomechanics.

3. The applicant must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of the application evaluation.

4. The grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

5. Any publications directly resulting from the grant should be reported to the responsible CDC program official. The grantee also must cite receiving support from HHS/CDC/NCIPC in any publications directly resulting from the new investigator grant.

F. Content

Letter of Intent (LOI)

The LOI is optional for this program. The narrative should be no more than single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the application review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet, and the narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and the ''CDC Injury Research Agenda'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan, which describes the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the roles and responsibilities of the principal investigator and mentor, where appropriate.

5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include letters of organizational commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries.

10. An evaluation plan for the project, including quantifiable measures of effectiveness.

Additional Materials Required

In addition to the completed PHS 398 application form, the applicant must also submit the following materials, attached to the application as appendices:

1. An official transcript of the applicant's graduate school record, if within the last three years.

2. When relevant, documentation showing the researcher has redirected his or her career within the last three years.

3. A justification for any proposed tuition support.

4. An overview of the applicant's prior research training and experience as well as a statement of the applicant's short-term and long-term research and career goals and intended career trajectory.

5. A letter from the applicant's mentor or scientific collaborator that outlines the proposed plan for providing scientific advice and consultation to the applicant during the grant period and a biography of the mentor or senior-level collaborator, limited to two pages (Use the Biographical Sketch page in application form PHS 398.)

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 4, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the original and two copies of PHS–398 (OMB Number 0925–0001). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700, and forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time, April 8, 2003.

Submit the application to: Technical Information Management—PA 03027, Procurement and Grants Office, Centers for Disease Control Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness, and eligibility as outlined under the ''Eligible Applicants'' section. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRGRC, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee consisting of no less than three reviewers with appropriate expertise using current NIH criteria (a scoring system of 100–500 points) will evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. *Significance*—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach*—Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project and the resources available? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation*—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator*—Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor or collaborator described?

e. *Environment*—Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (*see* Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the

secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda'.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report (The progress report will include a data requirement that demonstrates measures of effectiveness).

2. A financial status report, no more than 90 days after the end of the budget period.

3. A final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the program announcement as posted on the CDC web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding,'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Richard Jenkins, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2604. E-mail address: *rbj3@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341–3724. Telephone: 770–488–4823. Internet address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3027 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Recommended Infection Control Practices for Dentistry, 2003

AGENCY: Centers for Disease Control and Prevention (CDC), and Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the Draft Recommended Infection Control Practices for Dentistry, 2003 available on the CDC Web site at *http://www.cdc.gov/OralHealth/infection_control/guidelines/comments.htm.* The guideline has been developed for practitioners who provide care for patients and who are responsible for monitoring and preventing infections and occupational health and safety in dental healthcare settings. The guideline is intended to replace Recommended Infection-Control Practices for Dentistry, 1993.

DATES: Comments on the Draft Recommended Infection Control Practices for Dentistry, 2003 must be received in writing (mail, e-mail, fax) on or before March 14, 2003.

FOR FURTHER INFORMATION CONTACT: If you can not access the internet, requests for a written copy can be submitted to: CDC, NCCDPHP, Division of Oral Health, Attention: Infection Control Guideline, 4770 Buford Highway, Mailstop F–10, Atlanta, GA 30341; via fax: 770–488–6080; or via email: denticrecom@cdc.gov.

ADDRESSES: Comments on the Draft Recommended Infection Control Practices for Dentistry, 2003 should be sent to the CDC, NCCDPHP, Division of Oral Health, Attention: Infection Control Guideline, 4770 Buford Highway, Mailstop F–10, Atlanta, GA 30341; or via fax: 770–488–6080; or via email: *denticrecom@cdc.gov;* or Internet: *http://www.cdc.gov/OralHealth/infection_control/guidelines/comments.htm.*

SUPPLEMENTARY INFORMATION: The two-part Draft Recommended Infection Control Practices for Dentistry, 2003 consolidates recommendations for the prevention and control of infectious diseases and the management of occupational health and safety issues related to infection control in dental settings. The guideline is intended to assist dental health-care personnel in preventing occupational exposures to bloodborne pathogens, the control of infections associated with contaminated medical devices or surgical instruments, and prevention of occupationally acquired infections and other related safety and health issues. Part I provides a review of the scientific data regarding dental infection control issues pertaining to an employee health program, personal protective equipment, preventing exposures to bloodborne pathogens, hand hygiene, sterilization or disinfection of patient-care items, the office environment, dental unit waterlines and water quality, special dental equipment and procedures, and program evaluation. Part II contains the consensus evidence-based recommendations by the CDC Division of Oral Health, the National Center for Infectious Diseases, the National Center for HIV, STD, and TB Prevention, and a national panel of experts in dental infection control.

Dated: January 31, 2003.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 03–3026 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–289, CMS–10082, CMS 1763, and CMS–4040 and 4040–SP]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Lifestyle Modification Program Demonstration and Addendum; *Form No.:* CMS–R–289 (OMB# 0938–0777); *Use:* This demonstration focuses on Medicare sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the progression of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration tests the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries; *Frequency:* On occasion, Weekly, Monthly, Quarterly; *Affected Public:* Individuals or Households, and Not-for-profit Institutions; *Number of Respondents:* 44; *Total Annual Responses:* 17,996; *Total Annual Hours:* 2,999.

(2) *Type of Information Collection Request:* New collection; *Title of Information Collection:* Survey of States Performance Measurement Reporting Capability; *Form No.:* CMS–10082 (OMB# 0938–NEW); *Use:* Because of the wide variability of Medicaid and SCHIP financing and service delivery approaches, there is little common ground from which to develop uniform reporting on performance measures by states. While CMS has decided on the first seven measures to be used, the ability of states to calculate those measures using HEDIS directly or HEDIS specifications (*e.g.*, when calculating measures from fee-for-service claims data) is highly variable. Current efforts are focused on assessing the capability of each state to report on the selected measures and on helping states to make necessary adjustments in order to be able to report measures uniformly so that state-to-state comparisons can be made. To accomplish this, states will be requested to report available numerator and denominator data for the seven core HEDIS measures via a survey instrument created for this purpose. The data will be requested for each state's Medicaid and SCHIP programs by delivery system; *Frequency:* Once; *Affected Public:* State, local, and tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 2,360.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium+Hospital and/or Supplementary Medical Insurance; *Form No.:* CMS–1763 (OMB# 0938–0025); *Use:* The CMS–1763 is used by beneficiaries to request voluntary termination from Premium Hospital Insurance (premium-HI) and/or Supplementary Medicare Insurance (SMI); *Frequency:* One time only; *Affected Public:* Individuals or Households, Federal Government, State, local, and tribal government; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Enrollment in Supplemental Medicare Insurance and Supporting Regulations in 42 CR 407.10 and 401.11; *Form No.:* CMS–4040 and 4040–SP (OMB# 0938–0245); *Use:* The CMS 4040 is used to establish entitlement to Supplemental Medical Insurance (Part B) by beneficiaries not eligible under Part A of the Title XVIII or Title II of the Social Security Act. The CMS–4040SP is also included in this renewal; *Frequency:* One time only; *Affected Public:*

Individuals or Households, Federal Government, State, local, and tribal government; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, *Attention:* Dawn Willinghan, *Room:* C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 30, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–2999 Filed 2–6–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2003; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice announcing the tentative schedule of public advisory committee meetings for 2003. This notice appeared in the **Federal Register** of December 19, 2002 (67 FR 77793 through 77796).

FOR FURTHER INFORMATION CONTACT: Theresa Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The following list revises FDA's tentatively scheduled advisory committee meetings for 2003. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 9, November 6	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 8, November 18	12388
Biological Response Modifiers Advisory Committee	February 27–28, June 9–10, October 9–10	12389
Blood Products Advisory Committee	March 13–14, June 19–20, September 18–19, December 11–12	19516
Transmissible Spongiform Encephalopathies Advisory Committee	February 20, July 17–18, October 30–31	12932
Vaccines and Related Biological Products Advisory Committee	February 20, May 8–9, September 22–23, November 19–20	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	March 12–13, March 21, April 22–23, September 17, October 21–23	12539
Advisory Committee for Reproductive Health Drugs	August 18–19, November 13–14	12537
Anesthetic and Life Support Drugs Advisory Committee	June 26–27, December 11–12	12529
Anti-Infective Drugs Advisory Committee	March 4–5–6, June 10–11, October 15–16	12530
Antiviral Drugs Advisory Committee	April 29–30, September 19	12531
Arthritis Advisory Committee	September 5	12532
Cardiovascular and Renal Drugs Advisory Committee	May 29–30, September 15–16, December 11–12	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	March 6–7, April 15–16, July 17–18, September 10–11	12534
Drug Safety and Risk Management Advisory Committee	April 24–25, September 18–19	12535
Endocrinologic and Metabolic Drugs Advisory Committee	June 12–13, September 11–12	12536

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
Gastrointestinal Drugs Advisory Committee	March 6, July 17	12538
Nonprescription Drugs Advisory Committee	June 12–13, September 16–17	12541
Oncologic Drugs Advisory Committee	March 3–4, March 12–13, June 10–11	12542
Peripheral and Central Nervous System Drugs Advisory Committee	July 18	12543
Psychopharmacologic Drugs Advisory Committee	September 4–5	12544
Pulmonary-Allergy Drugs Advisory Committee	May 15–16, November 6–7	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	February 24–26, August 18–20	10564
Biotechnology Sub-Committee	March 24–25, October 15–16	10564
Dietary Supplements Sub-Committee	March 27–28, September 22–23	10564
Contaminants and Natural Toxicants Sub-Committee	March 6–7, September 4–5	10564
Nutrition Sub-Committee	April 28–29, November 3–4	10564
Food Additives Sub-Committee	June 19–20	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings planned	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	May 7–8, September 4–5, November 10–11	12624
Circulatory System Devices Panel	March 6, April 24–25, June 26–27, August 28–29, October 23–24, December 11–12	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	May 19, September 8–9, December 11–12	12514
Dental Products Panel	May 22–23, August 7–8, October 9–10	12518
Ear, Nose, and Throat Devices Panel	April 8–9, June 2–3, August 4–5, October 9–10, December 4–5	12522
Gastroenterology and Urology Devices Panel	January 17, April 4, July 25, October 17	12523
General and Plastic Surgery Devices Panel	February 27, April 10–11, July 23–24, October 23–24	12519
General Hospital and Personal Use Devices Panel	May 15–16, August 18–19, November 20–21	12520
Hematology and Pathology Devices Panel	June 20, October 3	12515
Immunology Devices Panel	March 17–18, June 9–10, September 15–16	12516
Medical Devices Dispute Resolution Panel	No meetings planned	10232
Microbiology Devices Panel	March 27–28, May 5–6, August 7–8, October 16–17	12517
Molecular and Clinical Genetics Panel	April 24–25, July 17–18, November 13–14	10231
Neurological Devices Panel	June 23–24, September 18–19, December 8–9	12513
Obstetrics and Gynecology Devices Panel	June 9–10, September 8–9, November 3–4	12524
Ophthalmic Devices Panel	May 22–23, July 10–11, September 11–12, November 6–7	12396
Orthopedic and Rehabilitation Devices Panel	May 29–30, August 27–28, November 20–21	12521
Radiological Devices Panel	May 20, August 12, November 18	12526

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
National Mammography Quality Assurance Advisory Committee	April 28, September 8–9	12397
Technical Electronic Product Radiation Safety Standards Committee	June 18	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	May 15, September 15	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	March 12–13–14, June 23–25	12560
Science Advisory Board to the National Center for Toxicological Research	June 3–5	12559

Dated: January 29, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3076 Filed 2–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessment for NIH Minority Research/Training Programs: Phase 3

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Research Council, on behalf of the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Assessment for NIH Minority Research/Training Programs: Phase 3. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The goal of this study is to assess and analyze NIH minority trainee educational and career outcomes to determine which programs and which features of programs have been most successful in helping individual students and faculty members move toward productive careers as research scientists. The primary objectives of the study are to determine how well NIH minority research/training programs are working and what additional factors contribute to minority trainee success, including characteristics of individual participants and the academic institutions where they received NIH research/training support and/or obtained their terminal degree.

In addition to conducting an assessment and analysis of the programs based upon information in existing NIH databases, current and former NIH trainees will be asked to participate in a voluntary telephone interview in which they will be asked to comment on aspects of their research training experience. Trainees asked to participate in the survey will include individuals who received research training in underrepresented minority-targeted programs and non-targeted programs, and who received support at academic levels ranging from their undergraduate years to the faculty level. This data collection will involve the use of computer-assisted telephone interviewing (CATI) software.

Program administrators at training grant recipient institutions will be interviewed by telephone to obtain their perspectives on the training programs. The results of the program administrator interviews will help NIH determine (1) The ways and extent to which NIH minority research/training programs work; (2) which features of minority programs have been the most successful in helping individual students and faculty members move forward toward productive careers as research scientists; (3) what programmatic, environmental, or other factors increase the likelihood of minority training programs and their participating trainees achieving success; and (4) how to better assess NIH minority training programs in the future. These interviews will provide a depth and quality of data that are not available through database query alone.

Frequency of response: one-time. *Affected Public:* Individuals. *Type of Respondent:* Individuals who have participated in NIH minority training programs. *Estimated Number of Respondents:* 1,200; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Joan Esnayra, Program Officer, Board on Higher Education and the Workforce, National Research Council National Academies, 2101 Constitution Ave. NW., Washington, DC 20418, or call non-toll-

free number (202) 334–2539, or e-mail your request, including your address, to *jesnayra@nas.edu.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 29, 2003.

John Ruffin,

Director, National Center on Minority Health and Health Disparities, NIH.

[FR Doc. 03–2988 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Recombinant SUMO–1 Isopeptidase Substrates for FRET Assays

Mary Dasso and Jun Hang (NICHD).
DHHS Reference No. E–086–02/0—Research Tool.
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov.*

The NIH announces a new Fluorescence Resonance Energy Transfer (FRET) assay for peptidases that regulate the processing of SUMO–1 and its removal from conjugation. SUMO–1 is an ubiquitin-like protein that becomes covalently linked to other proteins, which in turn may participate in events leading to cancer and viral infection. The inventors have created a FRET substrate that fuses unprocessed SUMO–1 at its N- and C-termini with different Green Fluorescence Protein (GFP) derivatives. The FRET assay may be used to identify pharmacological agents that can regulate the SUMO–1 peptidases or to monitor their activities.

Human Gene Critical to Fertility

Lawrence Nelson and Zhi-bin Tong (NICHD).
DHHS Reference No. E–239–00/1 filed 04 Apr 2001 (PCT/US01/10981).
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov.*

Some molecular pathways are unique to the reproductive process. Illuminating such processes would be expected to lead the way to the most specific molecular contraceptive targets. The Mater gene is essential for embryonic development beyond the two-cell stage. Mater expression is specific to the oocyte. Thus, Mater appears to qualify as a player in a unique molecular pathway that is specific to the reproductive process.

The human MATER gene was identified through research investigating autoimmune premature ovarian failure. Premature ovarian failure (POF) is a term used to describe a condition associated with female sex hormone deficiency and infertility in women younger than age 40. As many as 1% of all women in the United States are thought to be afflicted with POF. Autoimmunity is a well-established mechanism of premature ovarian failure.

The NIH announces a new technology that encompasses the MATER gene, protein and MATER-specific antibodies. These molecules can be used in diagnosing and/or treating infertility, and in developing contraceptives.

Anti-Inflammatory Actions of Cytochrome P450 Epoxygenase-derived Eicosanoids

Drs. Darryl C. Zeldin (NIEHS), James Liao (EM).
DHHS Reference Nos. E–252–1999/0–US–02 filed 09 Aug 2000 and E–252–1999/0–PCT–03 filed 10 Aug 2000.
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov.*

Cytochrome P450s catalyze the NADPH-dependent oxidation of arachidonic acid to various eicosanoids found in several species including humans. The eicosanoids are biosynthesized in numerous tissues including pancreas, intestine, kidney, heart, and lung where they are involved in many different biological activities.

The NIH announces a new therapy wherein epoxyeicosatrienoic acid (EET) compositions have been found to be useful in preventing endothelial cell death due to hypoxia-reoxygenation. Given that endothelial injury is an important early event in the development of the atherosclerotic plaque and is associated with myocardial dysfunction in ischemic heart disease, reduced EET levels are speculated to be involved in the pathogenesis of these cardiovascular disorders.

This research is described in Yang *et al.*, Molecular Pharmacology 60: 310–320, 2001.

Dated: January 29, 2003.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–2989 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: March 20, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2982 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SCOR in Neurobiology of Sleep and Sleep Apnea and Airway Biology and Pathogenesis of Cystic Fibrosis.

Date: March 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Baltimore Inner Harbor, 110 South Eutaw Street, Baltimore, MD 21201.

Contact Person: Arthur N Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2986 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 9–11, 2003.

Closed: February 9, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814,

Open: February 10, 2003, 8:30 a.m. to 2 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892,

Closed: February 10, 2003, 2 p.m. to adjournment at 5 p.m. on Tuesday, February 11, 2003.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892–2033, (301) 435–5536, *guyerm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2983 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Mentored Research Scientist Development Award.

Date: March 5, 2003.

Time: 8:15 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2979 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group, NRRC 26.

Date: March 6–7, 2003.

Time: 8:15 a.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2980 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, RFA NR–03–003: Research To Improve Care For Dying Children And Their Families.

Date: March 10–11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2981 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project (P01) Applications.

Date: February 26–28, 2003.

Time: 6:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott-Duke University/Durham, 1815 Front St., Durham, NC 27705.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental health sciences, P.O. Box 12233, MD EC–30/Room 3171., Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazards Waste Worker Health and Safety Training; 93.143, NIEHS SuperFund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2984 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Synthesis of New Chemical Probes'' (Topic 047).

Date: February 19, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2985 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

Date: February 24, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Award, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2987 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in March 2003.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission will focus on issues relating to its final report.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, *http://www.mentalhealthcommission.gov,* or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: March 5, 2003, 10:15 a.m. to 3 p.m.; Open: March 6, 2003, 8:30 a.m. to 12:15 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.* Web site: *http://www.mentalhealthcommission.gov.*

Dated: February 3, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3075 Filed 2–6–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Minor Adjustment of Kodiak National Wildlife Refuge Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of boundary adjustment.

SUMMARY: The Secretary of the Interior, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has made a minor modification to the boundary of the Kodiak National Wildlife Refuge in the State of Alaska. This boundary adjustment was made to incorporate a parcel of land which is adjacent to the former Refuge boundary. This parcel is a portion of a large, phased acquisition by the State of Alaska using *EXXON Valdez* oil spill settlement funds. This action added 2,699.75 acres to the Refuge.

DATES: Title to the land in question vested in the Untied States of America on December 5, 2000. Notification to Congress of the proposed boundary change was provided April 3, 2002.

ADDRESSES: Division of Realty, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: Sharon N. Janis, 907–786–3490.

SUPPLEMENTARY INFORMATION: In 2000, 2,699.75 acres of land were acquired from Afognak Joint Venture by the Untied States, for administration by the Fish and Wildlife Service. These lands lie outside, but adjacent to, the boundary of the Kodiak National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act. These lands are identified as Tract B of the Subdivision of Tract B Waterfall Addition, according to the plat thereof filed as Plat No. 2000–20 on November 8, 2000, in the Kodiak Recording District, Third Judicial District, State of Alaska, which is located in Sections 4, 9, 15, 16, 17, 19, 20, and 21, Township 21 South, Range 20 West, Seward Meridian, Alaska.

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make

minor boundary adjustments to the Wildlife Refuges created by the Act. Under this authority, and following due notice to Congress, the Secretary, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has used this authority to adjust the boundaries of the Kodiak Refuge to include the 2,699,75 acres of land referenced above. This adjustment modifies the boundary previously described in **Federal Register** (48 FR 7966, February 24, 1983).

David B. Allen,

Regional Director.

[FR Doc. 03–3103 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW, Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request to the address above for a copy of such documents within 30 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION:

Permit No. TE–060299

Applicant: Bruce Pavlick, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–066684

Applicant: Peter Abraham, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–065394

Applicant: David Cowley, Las Cruces, New Mexico.

Applicant requests a new permit for research and recovery purposes to survey for and collect specimens of Rio Grande silvery minnow *(Hybognathus amarus)* within New Mexico.

Permit No. TE–065393

Applicant: Robert Thompson, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–840331

Applicant: Arizona State Land Department, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher *(Empidonax traillii extimus)* and cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–826091

Applicant: Bureau of Land Management—Phoenix Field Office, Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence and monitoring surveys for, capture of, and modification of habitat of Sonoran pronghorn *(Antilocapra americana sonoriensis)* within Arizona.

Permit No. TE–066458

Applicant: The National Aquarium, Washington, D.C.

Applicant request a new permit for purposes of education display to collect the following species: Texas blind salamander *(Typhlomolge rathbuni),* fountain darter *(Etheostoma fonticola),* bonytail chub *(Gila elegans),* Rio Grande silvery minnow *(Hybognathus amarus),* desert pupfish *(Cyprinodon macularius),* Leon Springs pupfish *(Cyprinodon bovinus),* razorback sucker *(Xyrauchen texanus),* Gila topminnow *(Poeciliopsis occidentalis),* and woundfin *(Plagopterus argentissimus).* All specimens will be collected from either the San Marcos National Fish Hatchery, San Marcos, Texas or the Dexter National Fish Hatchery, Dexter, New Mexico.

Permit No. TE–023152

Applicant: Michael Baker Jr., Inc., Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher *(Empidonax traillii extimus)* within Arizona.

Permit No. TE–828963

Applicant: Connors State College, Warner, Oklahoma.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for red-cockaded woodpecker *(Picoides borealis)* within Oklahoma.

Permit No. TE–028652

Applicant: Jean Krejca, Austin, Texas.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for, mapping, and collection of the following species within Texas: Government Canyon Bat Cave spider *(Neoleptoneta microps),* Government Canyon Bat Cave meshweaver *(Cicurina vespera),* Braken Bat Cave meshweaver *(Cicurina venii),* Madla Cave meshweaver *(Cicurina madla),* Robber Baron Cave meshweaver *(Cicurina baronia),* Cokendolpher cave harvestman *(Texella cokendolpheri),* Helotes mold beetle *(Batrisodes venyivi),* [unnamed] ground beetle *(Rhadine infernalis),* and [unnamed] ground beetle *(Rhadine exilis).*

Permit No. TE–066226

Applicant: Amanda Moors, Globe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species: Cactus ferruginous pygmy owl *(Glaucidium*

brasilianum cactorum), Sonoran pronghorn *(Antilocapra americana sonoriensis),* and Mount Graham red squirrel *(Tamiasciurus hudsonicus grahamensis)* within Arizona; Yuma clapper rail *(Rallus longirostris yumanensis)* within Arizona and California; lesser long-nosed bat *(Leptonycteris curasoae yerbabuenae)* within Arizona and New Mexico; Mexican long-nosed bat *(Leptonycteris nivalis)* within New Mexico and Texas; and southwestern willow flycatcher *(Empidonax traillii extimus)* within Arizona, California, New Mexico, Texas, and Utah.

Permit No. TE–066229

Applicant: Whitenton Group, San Marcos, Texas.

Applicant request a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: Golden-cheeked warbler *(Dendroica chrysoparia),* black-capped vireo *(Vireo atricapillus),* piping plover *(Charadrius melodus),* red-cockaded woodpecker *(Picoides borealis),* northern aplomado falcon *(Falco femoralis septentrionalis),* fountain darter *(Etheostoma fonticola),* San Marcos gambusia *(Gambusia georgei),* ocelot *(Leopardus pardalis),* jaguarundi *(Herpailurus yagouaroundi cacomitli),* Barton Springs salamander *(Eurycea sosorum),* bonytail chub *(Gila elegans),* Texas blind salamander *(Typhlomolge rathbuni),* and Houston toad *(Bufo houstonensis).*

Permit No. TE–037155

Applicant: BIO–WEST, Logan, Utah.

Applicant requests an amendment to an existing permit to allow surveys for and collection of Colorado pikeminnow *(Ptychocheilus lucius)* and razorback sucker *(Xyrauchen texanus)* within New Mexico, Colorado, and Utah.

Susan MacMullin,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–2993 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of 12-month Finding on a Petition to List Mount Ashland Lupine (*Lupinus lepidus var. ashlandensis*) and Henderson's Horkelia (*Horkelia hendersonii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list *Lupinus lepidus* var. *ashlandensis* (Mount Ashland lupine), and *Horkelia hendersonii* (Henderson's horkelia), in accordance with the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information available, we find that the petitioned action is not warranted. We ask the public to submit to us any new information that becomes available concerning the status of or threats to these species. This information will help us monitor and encourage the conservation of these species.

DATES: The finding announced in this document was made on January 26, 2003. Comments and information may be submitted to us until further notice. You may submit new information concerning these species for our consideration at any time.

ADDRESSES: You may send data, information, or questions concerning the finding to the Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. You may inspect the petition, administrative finding, supporting information, and comments received, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy L. Pendergrass, at the above address (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petition action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

We received two separate petitions, both dated September 9, 1999, from the Rogue Group Sierra Club to list *Lupinus aridus* spp. *ashlandensis* (Mount Ashland lupine) and *Horkelia hendersonii* (Henderson's horkelia) as endangered or threatened throughout their range, and to designate critical habitat. On June 13, 2000, we published a 90-day finding for these two species in the **Federal Register** (65 FR 37108). We found that the petitions presented substantial information indicating that listing may be warranted. At that time, we initiated a review of the species' status within their historical range. This 12-month finding has been made in accordance with the judicially approved settlement agreement requiring us to submit a final listing decision on these species to the **Federal Register** by February 1, 2003 (*Sierra Club* v. *Norton et al.* (Civ. No. 01–1804–BR)).

Lupinus lepidus var. *ashlandensis* is an erect, perennial herb within the Fabaceae family. It forms clumps 15 to 20 centimeters (cm) (5.9 to 7.9 inches (in)) in diameter. Plants are 7 to 12 cm (2.8 to 4.7 in) tall with leaves palmately compound with 5 to 7 leaflets that are up to 3 cm (1.2 in) long. Leaves are numerous and crowded from the basal crown, with pubescent (hairy) undersurfaces and glabrous (hairless) upper sides. Flowers are blue with petals about 11 millimeters (mm) (0.43 in) long. The banner (upper petal) is glabrous and the keel (lower petal) ciliate (with sparse hairs) on the margin (Meinke 1982).

Lupinus lepidus var. ashlandensis occurs as a single population of approximately 35,000 plants on the summit and western ridge of Mount Ashland within Oregon. The entire population is located in an area of about 30 hectares (ha) (74 acres (ac)), with two thirds of the known population on the ridge-line within 0.4 kilometers (0.25 miles) of the summit of Mount Ashland (Rolle 1993). The plants occur in four discontinuous patches within this 30 ha (74 ac) area. Much of the habitat that *Lupinus lepidus* var. *ashlandensis* occurs in are brush fields or clumps of brush, and is not suitable habitat. It is estimated that less than 60 percent or approximately 17 ha (42 ac) is actually occupied by *Lupinus lepidus* var. *ashlandensis.*

Horkelia hendersonii, a member of the rose family (Family Rosaceae), is a perennial herb with several stems arising from a branching, woody crown, approximately 1 to 1.5 decimeters (3.9 to 5.9 in) high (Abrams 1941; Keck 1938). Leaves are silky and 4 to 6 cm (1.6 to 3.3 in) long with 11 to 19 leaflets arranged pinnately (Meinke 1982). Flowers are white to pink with petals 4 mm (0.16 in) long in a somewhat clustered terminal (grouped at the tip of the stems) inflorescence (Peck 1961). This plant is one of approximately eight Oregon species of the genus *Horkelia. Horkelia hendersonii* is distinguished

from similar species by entire or simple cleft leaf stipules (leaflet structure at the base of the leaf stem) and densely long-silky hairs on the leaves and stems. It is the only alpine horkelia in Oregon having dense silky, non-glandular (non-sticky) hairs.

Horkelia hendersonii is estimated to be approximately 32,307 individuals, occupying a total of 86.6 ha (214 ac), with four main population centers in Oregon and one small population in California. The two species co-occur on the top of Mount Ashland.

According to the petitions, the Mount Ashland populations of both species are threatened by the existing use and potential expansion of ski area facilities, roads, mountaintop facilities, and summer recreation. Additional threats identified in the *Horkelia hendersonii* petition included grazing, mining, firebreak construction, off-road vehicles, and logging.

Current recreational ski activities occur over about 3.4 ha (8.5 ac) or approximately 12 percent of the area where these species occur at Mount Ashland. These operations have occurred over this occupied habitat for about four decades with no observable changes in population distribution or numbers. A ski expansion proposed at Mount Ashland is expected to increase the number of skiers in occupied habitat. On the basis of information provided in the U.S. Forest Service's (Forest Service) (2000) draft environmental impact statement (DEIS), we believe that additional skier use as a result of the expansion of the ski area on Mount Ashland would not significantly destroy, modify, or curtail either species' habitat or range. We base this on the fact that the plants are dormant and insulated by a layer of snow during the winter period of use. Also, mitigation measures contained in a recently signed conservation agreement (CA) are expected to ameliorate impacts from the ski expansion.

The petitioners expressed concern that activities associated with the proposed ski expansion may increase the pressure of the snowpack on dormant *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* root crowns, change the longevity of the snow pack, or otherwise affect the environment and habitat that currently support these two species in this area of impact. There have been no studies to date that we are aware of to determine if skiing activities affect *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* or their habitat underneath the snowpack. Also, the petitioners did not present any information on scientific studies that detailed effects to alpine vegetation by ski activities. Thus, these impacts are unknown. If changes in environmental conditions occurred in the past as a result of these activities, it is unknown whether the effects were detrimental, beneficial, or neutral to *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* individuals (Forest Service 2000).

Although initial road developments constructed years ago resulted in some habitat and individual plant loss, no current proposals call for expansion of existing roads or new road construction. Cutbanks and new drainage patterns created by the summit road on Mount Ashland have started gullies, which may reduce soil moisture retention, thereby reducing habitat for both species (Kagan and Zika 1987a, b; Zika 1987). During October 2002, the Forest Service started actions to improve drainage patterns of the existing road on Mount Ashland to ameliorate these potential gully impacts (W. Rolle, Forest Service, *in litt.,* 2002). The threat of gully formation associated with roads is much less at the Dutchman Peak/Jackson Gap, and is unknown for the Dry Lake Lookout site. Forest Service personnel are to evaluate sites that contain or are adjacent to roads for this potential impact on an annual basis, with the intent to implementing actions to reduce road impacts (Service and Forest Service 2002). Since no new road construction or widening are presently planned in areas where *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* occur, and because the Forest Service is currently working to ameliorate habitat threats as a result of the current road at Mount Ashland, we do not consider road construction and maintenance to be a significant current threat to these species.

An existing off-road vehicle track leading west from the Mount Ashland summit access road at the first switchback has been reported to be a potential avenue for the introduction of roadside weeds into the meadow and flat area that supports a sizeable population of *Horkelia hendersonii* and a small population of *Lupinus lepidus* var. *ashlandensis* (Kagan and Zika 1987a; Zika 1987). However, this potential impact is not yet evident. Though a few non-natives are present, they are either not expanding or are fairly ephemeral (transient) components of the plant communities. Unlike many other plant communities, non-native species are generally not increasing in areas inhabited by *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii*. The lack of establishment by these non-natives is likely due to the harsh alpine conditions of these sites, and that non-native plants adapted for these conditions have not been introduced.

Although mountaintop developments constructed years ago resulted in some habitat and individual plant loss, there have been few other such developments since. Only one new mountaintop development is currently proposed, to replace an outdated underground power cable that supplies electricity to weather and telecommunications facilities at the summit of Mount Ashland (Forest Service 2002). The Forest Service proposes that, in order to reduce impacts to the populations, the cable installation should occur within the existing compacted roadbed, instead of where it presently occurs. With this alternative, the project would intersect only a small portion of habitat and result in the loss of just a few plants of both *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii*. No additional mountaintop developments are planned in the foreseeable future. Threats associated with the maintenance of these facilities are generally low in magnitude and are not thought to comprise a threat to either species or their habitat.

Relatively small areas (3 to 4 percent) of the total population areas are currently being impacted as a result of trampling and soil compaction from summer recreational activities. Actions currently being implemented by the Forest Service to reduce these impacts include the placement of barriers to delineate parking areas, enforcement of off-road vehicle restrictions, signing and environmental education, camping closures, and limitations on special use permits (limits on size and number of gatherings) (Service and Forest Service 2002). These efforts are expected to contain summer recreational impacts to these small areas occupied by *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* (W. Rolle, *in litt.,* 2002). Since summer recreation threats are currently very limited in extent and overall magnitude, and the Forest Service is actively managing to reduce these threats, summer recreation is not currently thought to be a significant threat to the species or their habitat.

Cattle grazing is not permitted in the Ashland Watershed or on any part of Mount Ashland; thus, no legal grazing is affecting *Lupinus lepidus* var. *ashlandensis* or the Mount Ashland population of *Horkelia hendersonii*. There are no proposals to permit grazing in this area in the future. Although cattle occasionally wander into these species' population areas, their presence is transitory and does not appear to affect *Lupinus lepidus* var. *ashlandensis*

or *Horkelia hendersonii* individuals or alter habitat. A few *Horkelia hendersonii* plants have been observed with herbivore damage (Kagan and Zika 1987b), but there is no direct evidence that either species is utilized as a forage plant for cattle or wildlife, nor does either species grow with livestock-preferred forage plants. All of the *Horkelia hendersonii* occurrences outside of the Mount Ashland area are in active range allotments. The dry *Horkelia hendersonii* habitat does not produce much forage and is not near water. Hence, livestock use is currently light on most of these areas and does not appear to affect *Horkelia hendersonii* plants.

There are no proposals to conduct mining in any of the areas where either species occurs, and the potential of firebreak construction is considered to be low. Logging is not thought to threaten either species as both are alpine plants found in non-forested habitats.

Neither *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii* has any known commercial, sporting, or scientific uses at this time. There are no identified pests or pathogens that appear to be serious threats to either species. No other natural or manmade mechanisms are known to effect either *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii* or their habitat.

Lupinus lepidus var. *ashlandensis* is a candidate for listing as an endangered species under the Oregon Endangered Species Act (OESA), while *Horkelia hendersonii* has no State status in either Oregon or California. Neither species receives protection under the OESA.

Lupinus lepidus var. *ashlandensis* is considered a sensitive species in Region 6 of the Forest Service, and *Horkelia hendersonii* is a considered a sensitive species in both Regions 5 and 6 of the Forest Service. Forest Service policies for sensitive species discourage or prohibit activities that would increase the need for Federal listing under the Act. The Oregon Natural Heritage Program prepared management guidelines for *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* under contract for the Forest Service in 1987. The Forest Service began the monitoring of both these species per this guidance, and the populations at Mount Ashland appear to be stable. The primary objective of the management guidance was to maintain or increase population numbers of these species and protect habitat. Since few new disturbances have occurred in occupied habitats, and the monitored populations appear to be stable, Forest Service management has been at least minimally successful in achieving this objective.

The Forest Service and the Service have developed a CA for both species across their ranges. This effort was initiated in 1995 as a cooperative agreement with the Oregon Natural Heritage Program to develop conservation agreements for selected high priority candidate species. The management goal of the CA is to maintain stable or increasing populations of *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* across their known ranges. This CA is to remain in effect in perpetuity. Development of the CA was based on our draft Policy for Evaluation of Conservation Efforts (PECE policy) (65 FR 37102). The conservation efforts that the parties have agreed to are identified in the CA, along with details indicating anticipated staffing, funding levels and source, and other resources necessary to implement projects to protect and monitor the species.

Overall, threats to these species and their habitat are generally low in magnitude. The trampling of habitat and individual plants, and soil compaction, both associated with summer activities, are occurring in only small areas of occupied habitat. Under the CA, the Forest Service is implementing actions to reduce or remove any remaining impacts to these species and their habitat.

Finding

We have reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with Lupinus aridus spp. *ashlandensis* and *Horkelia hendersonii*. On the basis of the best scientific and commercial information available, we find the petitioned action is not warranted. We find that the overall imminence and magnitude of threats to *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* is relatively low. Both species occur exclusively on lands managed by the Forest Service, and their distribution has historically been limited. The population distributions and numbers are thought to relate closely to their original extents.

We will continue to monitor the status of these species. Should an emergency situation develop with one or both of these species, we will act to provide immediate protection, if warranted. We ask the public to submit to us any new information that becomes available concerning the status of or threats to these species. This information will help us monitor and encourage the conservation of these species.

References Cited

A complete list of all references cited herein is available upon request from the State Supervisor, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Author(s)

The authors of this document are Andy Robinson, Brendan White, and Kathy Pendergrass, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 26, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–3019 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List the Western Sage Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) under the Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that listing this subspecies may be warranted, on the basis of our determination that there is insufficient evidence to indicate that the western population of sage grouse is a valid subspecies or a Distinct Population Segment (DPS). We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to the western population of sage grouse. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on January 26, 2003. You may submit new information

concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. Submit new information or comments concerning this petition to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Kemper M. McMaster, Field Supervisor, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of our receipt of the petition, and publish the notice of the finding promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated, under our internal candidate assessment process.

We received a petition, dated January 24, 2002, from the Institute for Wildlife Protection requesting that the western sage grouse (*Centrocercus urophasianus phaios*) occurring from northern California, through Oregon and Washington, in addition to any western sage grouse that still occur in parts of Idaho, be listed under the Act. Although we published a 12-month finding for the Columbia Basin distinct population segment (DPS) of sage grouse in May 2001, the petitioner requested that we include this population in our review of the petition. The 12-month finding for the Columbia Basin DPS of sage grouse was that listing was warranted but precluded due to higher priority listing actions (66 FR 22984). That finding presented information describing genetic and ecological differences between sage grouse located in the Columbia Basin and the population of sage grouse in central and southern Oregon, as well as the significant gap in the range of the Washington population (66 FR 22984). The Columbia Basin DPS of sage grouse is presently a candidate for listing (67 FR 40657). Since our 12-month finding presented an in-depth review of this population of sage grouse, this review will only focus on the remaining portion of the petitioned sage grouse.

The petitioner requested that the western sage grouse occurring in northern California, in addition to any western sage grouse that still occur in parts of Idaho, be listed under the Act. However, we note that the inclusion of California is incorrect according to Aldrich and Duvall (1955) and Aldrich (1963). Sage grouse in northern California and northwestern Nevada were reclassified as an intermediate form (Aldrich and Duvall 1955; Aldrich 1963). As for any western sage grouse in Idaho, Aldrich (1946) stated that it was possible that western sage grouse occurred in central-western Idaho. However, no specimens have ever been collected to verify the existence of western sage grouse in Idaho.

The petition clearly identified itself as such and contained the name, address, and signature of the petitioning organization's representative. Accompanying the petition was information related to the taxonomy, life history, demographics, movements, habitats, threats, and the past and present distribution of the western sage grouse. The petitioner contends that the range of the western sage grouse and the number of individuals, have decreased by approximately half, and that the subspecies has become isolated into a series of fragments. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, we have reviewed the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

This 90-day petition finding is made in accordance with a proposed settlement agreement which would require us to complete a finding by January 30, 2003 (*Institute for Wildlife Protection and Dr. Steven G. Herman* v. *Norton et al.* (CV02 1604L, W.D. WA)).

The following information regarding the description and natural history of greater sage grouse (*Centrocercus urophasianus*) (sage grouse) (American Ornithological Union (AOU) 2000) has been condensed from these sources: Aldrich 1963; Johnsgard 1973; Connelly *et al.* 1988; Connelly *et al.* 2000; Fischer *et al.* 1993; Drut 1994; Western States Sage Grouse Technical Committee 1996 and 1998; and Schroeder *et al.* 1999.

The sage grouse is the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp.). Throughout much of the year, adult sage grouse rely on sagebrush to provide roosting cover and food. During the winter, they depend almost exclusively on sagebrush for food. The type and condition of shrub steppe plant communities strongly affect habitat use by sage grouse populations. However, these populations also exhibit strong site fidelity (loyalty to a particular area). Sage grouse may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas; however, average population movements are generally less than 34 km (21 mi). Sage grouse are also capable of dispersing over areas of unsuitable habitat.

During the spring breeding season, primarily during the morning hours just after dawn, male sage grouse gather together and perform courtship displays on areas called leks (areas where animals assemble and perform courtship displays). Areas of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac) and can host from several to hundreds of males. Some leks are used for many years. These ''historic'' leks are typically larger than, and often surrounded by, smaller ''satellite'' leks, which may be less

stable in size and location within the course of 1 year and between 2 or more years. A group of leks where males and females may interact within a breeding season or between years is called a lek complex. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating.

Females may travel up to 35 km (22 mi) after mating, and typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used. Nests are relatively simple and consist of scrapes on the ground. Clutch sizes range from 6 to 13 eggs. Nest success ranges from 10 to 63 percent and is relatively low compared to other prairie grouse species. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years; however, sage grouse up to 10 years of age have been recorded in the wild. The annual mortality rate for sage grouse is roughly 50 to 55 percent, which is relatively low compared to other prairie grouse species. Females generally have a higher survival rate than males, which accounts for a female-biased sex ratio in adult birds.

Prior to European expansion into western North America, sage grouse were believed to occur in the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Kansas, Oklahoma, Nebraska, New Mexico, Arizona, and the Canadian provinces of British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999). Currently, sage grouse occur in 11 states and 2 Canadian provinces, ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. In addition, sage grouse occur in southern Idaho, the northern two-thirds of Nevada, parts of Utah, most of Wyoming, southern and eastern Montana, and extreme western North and South Dakota. Sage grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, Arizona, and British Columbia (Schroeder *et al.* 1999).

The distribution of sage grouse has contracted in a number of areas, most notably along the northern and northwestern periphery and in the center of their historic range. There may have been between roughly 1.6 million and 16 million sage grouse rangewide prior to European expansion across western North America (65 FR 51578). The Western States Sage Grouse Technical Committee (WSSGTC) (1999) estimated that there may have been about 1.1 million birds in 1800. Braun (1998) estimated that the 1998 rangewide spring population numbered about 157,000 sage grouse. More recent estimates put the number of sage grouse rangewide at between roughly 100,000 and 500,000 birds (65 FR 51578). Sage grouse population levels may have declined from historic to recent times between 69 and 99 percent (65 FR 51578). WSSGTC (1999) estimates the decline between historic and present day to have been about 86 percent.

Apparently, much of the overall decline in sage grouse populations occurred from the late 1800s to the mid-1900s (Hornaday 1916; Crawford 1982; Drut 1994; Washington Department of Fish and Wildlife (WDFW) 1995; Braun 1998; Schroeder *et al.* 1999). Other declines in sage grouse populations apparently occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997).

In Oregon, a 50 percent net loss in sage grouse distribution took place between about 1900 and the mid-1950s (Drut 1994). Since the 1950s, sage grouse distribution in Oregon has undergone only minor changes (Drut 1994). Between 1941 and 1952, hundreds of birds from Harney and Malheur counties were transplanted to Crook, Sherman, Wasco, and other counties (Crawford 1982). These transplants were not successful, and it is unclear what effect a successful translocation of sage grouse from the eastern population into the western population might have had on the genetics of sage grouse in Oregon.

Two subpopulations of sage grouse remain in Washington (WSGWG 1998). One occurs primarily on private and State-owned lands in Douglas County; the other occurs at the Yakima Training Center, administered by the U.S. Army in Kittitas and Yakima counties. These two subpopulations are isolated from the Oregon population and nearly isolated from one another (65 FR 51578).

Western sage grouse were first described in 1946 by Aldrich. Aldrich (1946) examined 11 specimens collected in Washington (3), Oregon (7), and California (1), and on the basis of slight color differences in the plumage, concluded that a subspecies existed in the western portion of the greater sage grouse range. The distribution of the western sage grouse was described as occurring from north to central-southern British Columbia; west to central Washington, central Oregon, and northeastern California; south to southeast-central and northeastern Oregon (possibly central-western Idaho) and central-eastern Washington (Aldrich 1946). Later, the distribution was modified to reclassify sage grouse in northwestern Nevada and northern California as an intermediate form (Aldrich and Duvall 1955; AOU 1957; Aldrich 1963). The validity of the taxonomic separation between an eastern and a western subspecies has since been questioned (Johnsgard 1983; Johnsgard 2002; Benedict *et al.* in press).

In 1957, the AOU recognized a subspecies division within the sage grouse taxon. Since that time, however, it has not conducted a review of this subspecies distinction. The AOU stopped listing subspecies as of the 6th (1983) edition of its Checklist, although it recommended the continued use of the 5th edition for taxonomy at the subspecific level. The AOU has not formally or officially reviewed the subspecific treatment of most North American birds, although it is working towards that (Richard C. Banks, National Museum of Natural History, pers. comm., 2000, 2002). Therefore, the western and eastern subspecies of sage grouse are still recognized by the AOU. However, the Oregon Department of Fish and Wildlife and others do not agree with this subspecies designation (Drut 1994).

R. Banks of the National Museum of Natural History (*in litt.*, 1992) reviewed the same sage grouse specimens available to Aldrich in 1946 and concluded that there is only a weak basis for the separation into two subspecies. Braun stated that the so-called western race of sage grouse in Oregon and Washington does not differ from sage grouse in California, northern Colorado, Wyoming, and other States (Clait E. Braun, Colorado Division of Wildlife, *in litt.* 1992 cited in Drut 1994). Braun continued by stating that the inclusion of western sage grouse as a category 2 species/subspecies by the Service is without merit.

In 1990, protein and deoxyribonucleic acid (DNA) studies were initiated to clarify the status of sage grouse subspecies in Oregon. Preliminary results indicated no differentiation among birds collected from different areas (Drut 1994). However, because the sample size was small, these results were never published (M. Pope, Oregon State University, pers. comm., 2002). Benedict *et al.* (in press) recently collected 332 birds from 16 populations in Washington, Oregon, California, and Nevada to sequence a rapidly evolving portion of the mitochondrial control region. They collected samples from

either side of the proposed boundary between the western and eastern subspecies, but found no genetic evidence to support the delineation of subspecies (Benedict *et al.* in press).

The boundary between the western and eastern subspecies is generally considered to occur along a line starting on the Oregon-Nevada border south of Hart Mountain National Wildlife Refuge and ending near Nyssa, Oregon (Aldrich and Duvall 1955; Aldrich 1963). No study has been published depicting a more precise separation between the two previously recognized subspecies. Although no study has specifically been conducted to show movement along this separation boundary, other studies involving radio-tagged sage grouse have documented movements back and forth across the proposed boundary. For example, Crawford and Gregg (2001) noted that two radio-tagged sage grouse hens captured on Hart Mountain National Wildlife Refuge in south-central Oregon moved to the vicinity of Lone Grave Butte on the Beatys Butte study area southeast of the refuge. They also noted that a hen and week-old brood moved from Beatys Butte to the Catnip Reservoir area of Sheldon National Wildlife Refuge in Nevada, a distance of over 32 km (20 mi). By mid-summer, 25 percent of marked hens (6) still alive had moved south onto Sheldon National Wildlife Refuge (Crawford and Gregg 2001). This small sample demonstrates movement of sage grouse across the boundary area separating the western and eastern populations of sage grouse.

At this time, sage grouse experts disagree about whether the western sage grouse is a valid subspecies. When informed taxonomic opinion is not unanimous, we evaluate the available published and unpublished information to come to our own adequately documented conclusion regarding the validity of taxa. Although the AOU has not made a procedural change regarding the treatment of subspecies, the best available science tells us that there is no genetic distinction between western and eastern sage grouse. Therefore, on the basis of lack of distinct genetic differences between the two putative subspecies, lack of ecological or physical factors that might contribute to population isolation, and evidence that birds freely cross the supposed boundary zone between the subspecies, we conclude that the western sage grouse is not a valid subspecies of the greater sage grouse. Because we no longer consider the western sage grouse a valid taxon, we must then consider whether the petitioned sage grouse populations might constitute a DPS.

Under our DPS policy (61 FR 4722), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) ''[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?).'' If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon ''as a consequence of physical, physiological, ecological, or behavioral factors.'' When evaluating these four factors, ''[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' The second condition, which does not apply here, is whether the population segment be ''delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.''

In determining the discreteness, or isolation, of the petitioned sage grouse, one of the factors to consider is physical separation from the rest of the taxon. The petitioner did not provide substantial information to demonstrate, nor does information in our files indicate, that the western population of sage grouse are physically isolated from nearby eastern populations. Along the eastern boundary of the petitioned sage grouse, the landscape consists of various mountain ranges, intervening valleys, and canyons, and birds are able to move between these areas. No physical barriers exist that would preclude the movement of birds across this landscape and hypothetical boundary separating the petitioned and more easterly populations. Crawford and Gregg (2001), through their studies, have documented the movement of sage grouse across this boundary. Dispersing birds have been estimated to be able to disperse up to 160 km (100 mi) (WDFW 1995; Schroeder *et al.* 1999). The petitioner acknowledges in the petition that the ranges of western and eastern populations of sage grouse overlap in Oregon (Webb 2001).

Other factors to consider with regard to discreteness or isolation of a population are genetic, morphological, and behavioral differences. As discussed above, there does not appear to be any genetic differentiation between sage grouse individuals found in western and eastern populations. Individual morphological variation, such as color, in this [sage] grouse, as in other species, is extensive (R. Banks, *in litt.,* 1992). Banks (*in litt.,* 1992) doubts that the color difference noted by Aldrich is sufficient to warrant the description or recognition of a subspecies, with the present concepts. He continues by stating that most taxonomists today would not make the decision to name a population on the basis of the minor color variation shown in the small sample available here. Even Aldrich (*in litt.,* 1992 cited in Drut 1994) states that the amount of morphological difference required to name a distinct population as a subspecies is arbitrary. The petitioner does not provide any information to document that the petitioned sage grouse exhibits any unique behavioral traits.

In summary, to make a DPS determination, we examined physical, physiological, ecological, and behavioral factors. Since no international government boundaries of significance are involved, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the western population of sage grouse is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of the western population of sage grouse within the greater sage grouse taxon. Therefore, we did not address the second element for determining a DPS, which is the potential significance of the western population of sage grouse to the remainder of the taxon. Finally, since the western population of sage grouse cannot be defined as a DPS at this time, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act.

Petition Finding

We have reviewed the petition, literature cited in the petition, other

pertinent literature, and information available in Service files. After our review, we find the petition does not present substantial information to indicate that the petitioned action may be warranted. We base this finding on a lack of evidence to support a separation of the greater sage grouse into eastern and western subspecies, and also on our determination that the western population of sage grouse does not constitute a DPS on the basis of the following: (a) insufficient information to determine whether the western population of sage grouse is geographically separated from other sage grouse throughout the range of the taxon; and (b) insufficient information to demonstrate that genetic, morphological, and behavioral aspects of the western population of sage grouse are unique.

References Cited

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Jeff Dillon, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 27, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–3020 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Indian Affairs (BIA) is submitting two information collection requests for extension to the Office of Management and Budget. The two collections are: Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before March 10, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Attn: Desk Officer for Department of the Interior, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW., Washington, DC 20503. Send a copy to Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, Mail Stop 3061–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney at 202–208–5480, or facsimile number: 202–219–0006, or E-mail: *Ross_Mooney@IOS.DOI.GOV.*

SUPPLEMENTARY INFORMATION: A request for comments regarding the two information collection requests was published in the **Federal Register** on October 1, 2002 (67 FR 61760). No comments were received during the comment period. We reviewed these two forms internally during the comment period and revised our burden hours for the two collections.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond.

OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted within 30 days are more assured of receiving maximum consideration. Please note that comments, names and addresses of commentators are available for public review during normal business hours. If you wish us to withhold any information you submit, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

Title: Water Request 25 CFR 171.

OMB Control #: 1076–0141.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 25,000.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 4292.

Title: Electric Service Application—25 CFR 175.

OMB Control #: 1076–0021.

Frequency of Collection: On Occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 4,750.

Total Annual Responses: 4750.

Total Annual Burden Hours: 1188.

Dated: January 2, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–2991 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–JH–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0019

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals, households, farms, or businesses interested in cooperating with the BLM in constructing or maintaining rangeland improvement projects to aid handling and caring for domestic livestock that BLM authorizes to graze on public land. BLM uses Form 4120–7, Application and Approval for Range Improvement Permit, to collect this information. This information allows the BLM to review the application and to make a decision on the proposed rangeland improvement project.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0019'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management,

Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommnication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315 *et seq.*) and the Federal Land Policy and Management Act (FLMPA) of 1976 (43 U.S.C. 1701 *et seq.*) provide the authority for the BLM to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. Sections 4 and 15 of the TGA and the regulation at 43 CFR 4120.3–3 allow permittees the opportunity to construct and maintain rangeland improvements on the public lands. Applicants must submit Form 4120–7, Application and Approval for Range Improvement Permit, to request rangeland improvement projects. BLM authorizes rangeland improvement projects to facilitate handling livestock while they are using public lands as an important and integral part of grazing use administration. BLM uses the information the permittees and lessees provide to:

(1) Review requests for privately funded rangeland improvement projects for compatibility with multiple use objectives and land use plans;

(2) Develop appropriate conditions and specifications; and

(3) Approve or reject the applications.

We use the name and address to determine if the applicant is a grazing permittee in compliance with 43 CFR 4120.3–3(a). Applicants also specify if they will construct a new improvement or obtain a permit to maintain an existing improvement. The applicant must briefly state a purpose or justification to determine the compatibility of proposed use with multiple use plans. The applicant identifies the specific location to determine land ownership and if needed, provides a plat to delineate linear improvements such as fences or pipelines.

Because of the variations in size and complexity of rangeland improvement projects, BLM estimates it takes 20 minutes to complete the required information. We estimate 60 responses per year and a total annual burden of 20 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3011 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–241A]

Extension of Approved Information Collection. OMB Control Number 1004–0034

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the office of Management and Budget (OMB) to extend an existing approval to collect certain information from those persons who wish to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the terms of the mineral leasing laws. BLM uses Form 3000–3, Assignment of Record Title Interest In A Lease for Oil and Gas or Geothermal Resources, and Form 3000–3a, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to collect this information. This information allows the BLM to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0034'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorize the Secretary of the

Interior to issue leases for development of Federal oil and gas and geothermal resources. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands) authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Department of the Interior Appropriations Act of 1981 (42 U.S.C. 6508) provides for the competitive leasing of lands for oil and gas in the National Petroleum Reserve-Alaska (NPRA). The Attorney General's Opinion of April 2, 1941 (40 Opinion of Attorney General 41) provides the basis under which the Secretary issues certain leases for lands being drained of mineral resources. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*) provides the authority for leasing lands acquired from the General Services Administration.

Assignor/transferor submits Form 3000–3, Assignment of Record Title Interest In A lease for Oil and Gas or Geothermal Resources, and Form 3000–3A, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216. These regulations outline the procedures for assigning record title interest and transferring operating rights in a lease to explore for, develop, and produce oil and gas and geothermal resources.

The assignor/transferor provides the required information to comply with the regulations in order to process the assignments of record title interest or transfer of operating rights (sublease) in a lease for oil and gas or geothermal resources. The assignor/transferor submits the required information to BLM for approval under 30 U.S.C. 187a and the regulations at 43 CFR 3106, 3135, and 3216.

BLM uses the information submitted by the assignor/transferor to identify the interest ownership that is assigned or transferred and the qualifications of the assignor/transferee. BLM determines if the assignor/transferee is qualified to obtain the interest sought and ensures the assignor/transferee does not exceed statutory acreage limitations.

Based on BLM's experience administering the activities described above, we estimate it takes 30 minutes per response to complete the required information. The respondents include individuals, small businesses, and large corporations. The frequency of response is annual. We estimate 60,000 responses per year and a total annual burden of 30,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3012 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PM–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0051

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from permittees and lessees on the actual grazing use by their livestock. BLM uses Form 4130–5, Actual Grazing Use Report, to collect this information. This information allows BLM to compute fees for the amount of forage authorized grazing livestock consume by area and period.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0051'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations in 43 CFR part 4130 to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315, 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*) provide the authority for the BLM to administer the livestock grazing program consistent with land-use plans, multiple-use objectives, sustained yield, environmental values, economic considerations, and other factors. BLM administers the grazing program, generally, by issuing grazing permits or leases that specify allowable livestock use by location, number and period. BLM recognizes that to sustain and conserve resources, minor annual adjustments of grazing terms and conditions as specified on a multi-year term permit or lease are needed to balance actual grazing use with available forage and water. Therefore, rather than relying solely upon the terms and conditions of the permit or lease as a record of the use made during any one year, BLM can require permittees or lessees to submit information that more accurately reflects the grazing use. Sections 3 and 15 of the TGA and the regulation at 43 CFR 4130.3–2(d) provide that BLM may require permittees or lessees to furnish a record of their actual grazing use. The regulation (43 CFR 4130.8–1(e)) provides for a grazing fee payment after the grazing season under specified

circumstances. Lessees or permittees submit grazing use information on the Form 4130–5, Actual Grazing Use Report.

BLM uses this information for two specific purposes:

a. *To calculate the fees due for the grazing use completed.* Fees are due the United States when BLM issues a billing notice and must be paid in full prior to grazing use, except when an allotment management plan (AMP) provides for delayed payment and it is incorporated into a grazing permit or lease. In this latter situation, BLM will issue a billing notice based upon the actual grazing use completed at the end of the grazing period or year (43 CFR 4130.8–1(e)). BLM uses the information it collects to bill for grazing use or to make up a part of the allotment monitoring records. The permittee and lessee must keep accurate and current records for the period of time his/her permit or lease covers. The information collected includes allotment and pasture location of the grazing, the date and numbers of livestock permitted on or removed from the range, and the kind or class of livestock grazed.

b. *To obtain information needed to monitor and evaluate livestock grazing use.* The purposes of the information are to determine if adjustments in the amount of use are needed, or if other management actions could achieve the desired effects. Knowledge of actual livestock grazing use is essential in the monitoring and the evaluation of the livestock grazing management program. Information on the specific use is essential for an accurate and complete analysis and evaluation of the effects of livestock grazing during particular periods of time, as interrelated with other factors such as climate, growth characteristics of the vegetation, and utilization levels on the plants.

Without this information, the BLM could not fulfill its legal responsibility to manage uses of the public land as required by law. The required information is only available from the grazing operators. Because the actual grazing use that occurs is not constant from year to year, BLM requires information for each grazing season for which grazing use is sought.

Based on BLM's experience administering the activities described above, we estimate the average public reporting burden to complete the required information is 25 minutes per response. Because of the variations in size and complexity or range livestock operations, some of the 15,000 responses may take a few minutes in one recording session to complete the form, while others may take up to 60 minutes combined through several sessions during the grazing year, with each requiring a few minutes to enter the required data. The respondents include permittees and lessees required to furnish a record of the actual grazing use. The frequency of response is annually. We estimate the number of responses per year is 15,000 and a total annual burden of 6,250 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3013 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1231–EB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0119

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from recreation visitors to areas of the public lands and related waters, where we require special recreation permits. BLM uses Form 8370–1, Special Recreation Application and Permit, to collect this information. This information allows the BLM to authorize requested recreation use and determine appropriate fees. BLM will also use the information to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0119'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Lee Larson, on (202) 452–5168 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Larson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents submit Form 8370–1, Special Recreation Application and Permit, to supply identifying information and data on proposed commercial, competitive, or individual recreation use. This information allows the BLM to authorize requested recreation use and determine appropriate fees. We will also use this information to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Based on BLM's experience administering the activities described above, we estimate the public reporting burden for the information collected is 30 minutes per response. The respondents are recreation visitors to areas of the public lands and related waters, where we require special recreation permits. The frequency of response is on occasion. We estimate the number of responses per year is 31,000 and a total annual burden of 15,500 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3014 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–EA–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0133

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from individuals desiring to use campgrounds. BLM uses Form 1370–36, Permit Fee Envelope, to collect this information. This information allows BLM to determine if all users have paid the required fee, the number of users, and their State of origin.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630) Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1044–0133'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Lee Larson, on (202) 452–5168 (Commercial or FTS). Persons who use telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Larson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents use BLM Form 1370–36 (Permit Fee Envelope) to supply the following information:

(a) The campsite number;

(b) Date camping;

(c) Number in party;

(d) Zip code;

(e) Fee paid;

(f) Vehicle license number; and

(g) Primary purpose of visit.

This information allows the BLM to determine if all users paid the required fee, the number of users, and their State of origin.

Based on BLM's experience administering the activities described above, we estimate the public reporting burden to complete the information collected is two minutes per response. The respondents are individuals desiring to use the campground. The frequency of response is occasionally. We estimate the total annual burden is 11,767 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3015 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service Northeast Region; Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Meetings for Harriet Tubman Special Resource Study

In accordance with section 102 (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for a Special Resource Study (SRS) of sites associated with Harriet Tubman in Auburn, New York, and Cambridge, Maryland, and possibly elsewhere. This study was mandated by Pub. L. 106–516, ''The Harriet Tubman Special Resource Study Act.''

Harriet Tubman was born into slavery in Maryland in about 1820. She escaped and returned many times to escort others from bondage, defying fugitive slave laws. Today, Harriet Tubman is widely known for her work as a ''conductor'' on the Underground Railroad, a role which has been described in legal documents, letters, newspapers, magazines, biographies, and histories. To some extent, this has overshadowed the other accomplishments for which she is less well noted. She had a military career during the Civil War as a scout, a spy, and a nurse, and received military honors at her burial. She also created her own social service institution by establishing a home for elderly poor African Americans, known later as Harriet Tubman Home for the Aged.

The purpose of this Special Resource Study/EIS is to provide Congress with information about the significance, suitability, and feasibility of sites related to Harriet Tubman. The study will develop alternative options for management and interpretation of certain sites. In addition, the study will also examine Tubman-related sites as a potential national heritage area, per the authorizing legislation.

The NPS will hold public meetings in winter 2002–2003, in various locations containing resources associated with Harriet Tubman. The meetings will be announced on the study's Internet Web site, *HarrietTubmanStudy.org,* in local media, by direct mail, and through known Tubman interest groups. The purpose of these meetings is to obtain written and oral comments concerning Tubman resources, commemoration of Tubman, and issues of possible environmental impact topics. A summary of public scoping will be prepared as part of the draft Environmental Impact Statement.

The draft report of the study, with the draft EIS, is expected to be completed

and available for public review by late 2003.

Additional information about the study/EIS may be obtained from the National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109, Barbara Mackey, Team Captain, at telephone 617–223–5138 or *Barbara_Mackey@nps.gov.*

Dated: December 11, 2002.

Lawrence Gall,

Acting Superintendent, Boston Support Office.

[FR Doc. 03–3097 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Luis Reservoir and Los Banos Creek State Recreation Area Joint General Plan and Resource Management Plan, Merced County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement/environmental impact report (PEIS/EIR).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation, in cooperation with the California Department of Parks and Recreation (DPR), proposes to prepare a draft PEIS/EIR for the San Luis Reservoir and Los Banos Creek State Recreation Area (SRA) joint General Plan and Resource Management Plan (GP/RMP). Scoping meetings are being conducted to elicit comments on the scope and issues to be addressed in the draft PEIS/EIR. The dates and times for the meetings are noted below.

DATES: The first scoping meeting was held on Saturday, January 11, 2003, from 10 a.m. to 2 p.m. in Gustine, California. The second scoping meeting will be held on Thursday, February 20, 2003, from 1 p.m. to 3 p.m. in Gustine, California.

Written comments should be sent to Reclamation at the address below by March 10, 2003.

ADDRESSES: The meeting location is at the California Department of Parks and Recreation, Four Rivers District Office, 31426 Gonzaga Road, Gustine, CA, 95322.

Written comments should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or faxed to 559–487–5130 (TDD 559–487–5933); or e-mail: *dholsapple@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, at the above address, telephone: 559–487–5409; or Dennis Imhoff, CEQA Coordinator, California Department of Parks and Recreation, Four Rivers District, 31426 Gonzaga Road, Gustine, CA 95322, telephone: 209–826–1197, e-mail: *dimho@parks.ca.gov.*

SUPPLEMENTARY INFORMATION: San Luis Reservoir is approximately 5 miles west of the City of Los Banos, adjacent to State Route 152, in Merced County, California. Los Banos Creek State Recreation Area is located about 5 miles southwest of the City of Los Banos, south of State Route 152, off Volta Road, just west of Interstate 5.

Reclamation and DPR are preparing a joint draft PEIS/EIR. DPR will be the Lead Agency for the California Environmental Quality Act (CEQA) and Reclamation will be the Lead Agency for NEPA.

DPR's General Plan Unit, in conjunction with its Four Rivers District Office, is developing the General Plan (GP) portion of the GP/RMP, in accordance with Public Resources Code § 5002.2 (General Plan guidelines) and § 21000 *et seq.* (CEQA). The purpose of the GP is to guide future development activities and management objectives at the Park. Reclamation is developing a RMP portion of the GP/RMP, pursuant to the Reclamation Recreation Management Act of 1992, Title 28, Pub. L. 102–575, the Council on Environmental Quality Regulations (CEQ) (40 CFR 1500–08) and the Federal Water Project Recreation Act. Reclamation and DPR are cooperating to prepare the GP/RMP in a consolidated planning process to solicit agency and stakeholder participation for both efforts simultaneously. The project areas for each plan will vary, based on differences in management and ownership; however, there will be common components within the joint GP/RMP.

The San Luis Reservoir and the Los Banos Creek Retention Dam were built in 1965 as part of the Central Valley Project on lands owned by Reclamation. The lands are jointly managed by the California Department of Water Resources (DWR) and DPR. DPR is responsible for recreation and resource management while DWR manages the water supply facilities.

There are additional tracts of land, managed by the California Department of Fish and Game (DFG) in the vicinity of the San Luis Reservoir, which were set aside to mitigate for construction impacts. These DFG-managed lands will not be part of the GP and PEIR/EIS, as DPR does not have management jurisdiction over these lands.

San Luis Reservoir Wildlife Area and O'Neill Forebay Wildlife Area, federally owned lands which are managed by DFG, will be included in the RMP and PEIR/EIS.

The objectives of the GP/RMP are to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract with DPR to:

- Protect the water supply and water quality functions of the reservoirs,
- Protect and enhance natural and cultural resources in the SRA, consistent with Federal law and Reclamation policies,
- Provide recreational opportunities and facilities consistent with the Central Valley Project purposes.

The GP/RMP will be the primary management guideline for defining a framework for resource stewardship, interpretation, facilities, visitor use, and services. The joint plan will define an ultimate purpose, vision and intent for management through goal statements, guidelines, and broad objectives. The GP/RMP will be a long-term plan that will guide future specific actions at the SRA. Subsequent specific actions will be the subject of future environmental analysis as required.

We would like to know the views of interested persons, organizations, and agencies as to the scope and content of the information to be included and analyzed in the draft PEIS/EIR. Agencies should comment on the elements of the environmental information that are relevant to their statutory responsibilities in connection with the proposed project.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 3, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–3023 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Request for Public Comments Concerning the Maintenance of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission is responsible for the maintenance and publication of the Harmonized Tariff Schedule of the United States (HTS), pursuant to title I of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3001 *et seq.*). The Commission is seeking input from users of the HTS on the maintenance and structure of the change record, so that public and private users can identify more easily the changes in each issuance of the HTS and locate the source of such changes. In addition, the Commission is asking users of the electronic revisions of the HTS to suggest changes or improvements in the posting of such files on the Commission's Web site.

EFFECTIVE DATE: Upon publication; comments are sought through the close of business on the date that is four weeks after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, (202) 205–2592; Janis L. Summers, Attorney-Adviser, Office of Tariff Affairs and Trade Agreements, (202) 205–2605; or David G. Michels, Special Assistant to the Director, (202) 205–3440; U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site *(http://www.usitc.gov).* Comments filed pursuant to this notice may be viewed on the Commission's Electronic Document Information System (EDIS–II) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Beginning with the first edition of the HTS (Commission Publication 2030) and continuing through the present, each printed annual edition of the HTS and each printed supplement has included as a final section a record of the changes contained therein. These records, although not legally authoritative in regard to the tariff treatment of imported goods, assist both public and private sector users of the HTS by identifying changes in HTS provisions. The change records list legal and statistical modifications in the notes and headings of the tariff schedule and, more recently, have included the source of each change together with its effective date. They are intended to be read in conjunction with the Preface to each printed or electronic issuance, because the Preface contains a complete enumeration of legal and administrative instruments and actions that affect the particular issuance, along with effective dates and citations. Since 2000, the Commission has also posted periodic electronic revisions of the HTS on its Web site, *www.usitc.gov,* so that the information in the tariff schedule is more current, together with electronic links to legal instruments making changes in the legal provisions of the HTS. These revisions each contain a complete set of the files that comprise the HTS, whether or not each file was modified. Each such revision likewise contains a change record, but that change record lists only the modifications contained in that revision and is not cumulative to the last printed edition or supplement. Thus, in order to compile a complete list of changes since the immediately prior printed document, a user must retain and combine all of the revision-related change records to have a composite list of changes since that printed document. This system has proven to be confusing to users, even to those most familiar with the HTS. The change records are presented for convenient reference, and as such are not part of the legal text of the HTS; further explanation was provided in the recently revised and expanded Preface to the HTS (2003).

Possible changes.—First, the Commission is considering any modifications that may make the change record more useful to all users, while still being administratively feasible, and that may also enable the staff concerned to keep this record more current (and better meet the needs of the Customs Service in updating its automated entry system). It should be noted that any such modifications would have no effect on the advisory nature of the change record, because the interpretation and administration of the HTS are within the legal authority of the Customs Service. In addition, significant lengthening of the change record and proposals for software changes are not likely to be feasible. Nonetheless, possible modifications might include: (1) Expansion of or changes in the descriptions of changes; (2) use of a revised tabular format, perhaps with additional columns providing new information of interest to users; (3) devising a useful method to show the indentation level in the nomenclature structure at which a change has occurred; (4) providing an on-line composite change record, perhaps extending back as far as the 1989 HTS, reflecting all prior legal and/or statistical changes as a history of each tariff provision; (5) if possible, using a format that enables the maximum number of users having different software to download or access the change record. Because the Commission does not determine as a matter of law the classification of imported goods, the change record cannot provide a cross-reference table showing actual changes in classification or the derivation of the scope of new tariff categories. However, other possible useful modifications in addition to the list above can be considered.

In addition, the Commission is considering whether the posting of electronic revisions of the HTS might be changed or improved, either in timeliness or in their method of presentation. These changes might include: (1) Posting only those chapter files, or even individual pages, that contain actual modifications; (2) posting a downloadable file that contains all chapters or pages that were modified since the last electronic revision was posted; (3) posting chapter files or pages whenever changes occur, rather than periodically when several instruments have modified the HTS; (4) eliminating the WordPerfect version and posting only the PDF version of the schedule; or (5) making other changes in the organization of the Web site to make it easier to locate and use these revisions. It is not considered feasible or desirable to insert in the actual tariff chapter files themselves a typed indicator of a change (such as italicized language) or the date it occurred, given staff resources, possible confusion where multiple changes occur, and the need for a more rapid reflection of tariff changes; also, the change record already provides a clearer list of these modifications and their sources.

Written submissions.—All submissions must comply with the

Commission's rules and should be filed with the Office of the Secretary of the Commission as soon as is practicable, but in any case before the close of business on the date that is four weeks after the date of publication of this notice in the **Federal Register.** The Commission's rules do not authorize the filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's Rules, as amended, 67 Fed. Reg. 68036 (Nov. 8, 2002).

Confidential business information (CBI).—The Commission does not anticipate that any private sector party would need to include CBI in any submission filed in response to this notice. If such information must be included, the filer must comply with the Commission's rules of practice and procedure, in particular §§ 201.6, 207.3 and 207.7 (19 CFR 201.6, 207.3 and 207.7), in addition to the general requirements for written submissions in § 201.8 of the Commission's rules.

Staff review.—An informal staff review of the public comments filed in response to this notice, and the staff's reaction to each comment, will be prepared and will be posted in memorandum form on the Commission's internet server on the page for ''Harmonized Tariff Schedule of the United States'' as soon as is practicable following the close of the comment period.

By order of the Commission.

Issued: February 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3056 Filed 2–6–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 (Preliminary) and 731–TA–1024–1028 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Korea, Mexico, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigations Nos. 701–TA–432 (Preliminary) and 731–TA–1024–1028 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of prestressed concrete steel wire strand (PC strand), provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and by reason of imports from Brazil, India, Korea, Mexico, and Thailand of PC strand that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by March 17, 2003. The Commission's views are due at Commerce within five business days thereafter, or by March 24, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to petitions filed on January 31, 2003, by counsel on behalf of American Spring Wire Corp., Bedford Heights, OH; Insteel Wire Products Co., Mt. Airy, NC; and Sumiden Wire Products Corp., Stockton, CA.

Participation in the investigations and public service list—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than February 19, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before

February 26, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3017 Filed 2–6–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: extension of a currently approved collection, application for procurement quota for controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was published in the **Federal Register** on December 6, 2002, Volume 67, Number 235, Page 72702, allowing for a 60 day public comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection in information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, and mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of The Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for procurement quota for controlled substances.

(3) *Agency form numbers, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number, DEA Form 250. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, United States Code, section 826, and title 21, Code of Federal Regulations (CFR), 1303.12(b) require the United States companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for a procurement quota for such class. DEA is required by statute (21 U.S.C. 826(c)) to limit the production of Schedule I and II controlled substances to the amounts necessary the meet ''the estimated legitimate medical, scientific, research and industrial needs of the United States.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses, one for each respondent. The estimated amount of time required for the average respond to respond: There are 284 respondents, completing 818 annual responses. Each response is estimated to take 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 818 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: February 3, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3077 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; application for individual marketing quota for a basis class of controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was

previously published in **Federal Register** on December 6, 2002, Volume 67, Number 235, Pages 72701–72702, allowing for a 60 day public comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 189. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, United States Code, section 826, and title 21, Code of Federal Regulations (CFR) 1303.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class must apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 264 responses, provided by 44 respondents. The estimated time required for the average respondent to respond is 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 132 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: February 3, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3078 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated June 28, 2002, and published in the **Federal Register** on August 7, 2002, (67 FR 51294), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections were received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3049 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 28, 2002, and published in the **Federal Register** on August 7, 2002, (67 FR 51294), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3050 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 21, 2002, and published in the **Federal Register** on October 25, 2002, (67 FR 65604), Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Polaroid Corporation to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated Polaroid Corporation to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3048 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 20, 2002, and published in the **Federal Register** on October 18, 2002, (67 FR 64419), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards. No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3051 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 25, 2002, and published in the **Federal Register** on November 7, 2002, (67 FR 67872), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Research Triangle Institute is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as a importer of the basic classes of controlled substances listed above.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3052 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances: Notice of Registration

By Notice dated October 21, 2002, and published in the **Federal Register** on October 25, 2002, (67 FR 65604), Rhodes Technologies, 498 Washington Street, Conventry, Rhode Island 02816, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The firm plans to produce bulk product for conversion and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed controlled substances is consistent with the public interest at this time.

DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3053 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2254–03]

Immigration and Naturalization Service; Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

COMMITTEE MEETING: Immigration and Naturalization Service, (INS) Data Management Improvement Act of 2000 (DMIA) Task Force.

DATE AND TIME: Friday, February 21, 2003, 10 a.m. to 1 p.m.

PLACE: INS Headquarters, 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

STATUS: Open. Notice is hereby given that the DMIA Task Force will meet on Friday, February 21, 2003, from 10 a.m. to 1 p.m. All times noted are eastern standard time. The meeting will be open to the public.

PURPOSE: The DMIA Task Force is focusing on issues related to facilitating the flow of traffic at United States ports-of-entry (POEs) while enhancing security and addressing commercial facilitation needs. The Task Force will be discussing facility and infrastructure issues, coordination and cooperation mechanisms, and information and technology issues. Discussion also will take place regarding resource requirements and how to determine those needs in support of POE operations.

PUBLIC PARTICIPATION: The meeting is open to the public; however, advance notice of attendance is required to ensure adequate seating and to arrange for appropriate clearance into the building. Persons planning to attend should notify the contact person no less than 5 days prior to the meeting. Members of the public may submit written comments or questions before the meeting to the contact person for consideration by the DMIA Task Force. Only written comments or questions received by the contact person no less than 5 days prior to the meeting will be considered for discussion at the meeting.

CONTACT PERSON: Michael Defensor or Deborah Hemmes, Immigration and Naturalization Service, 425 I Street, NW., Room 7257, Washington, DC 20536; telephone (202) 305–9863; fax: (202) 305–9871; e-mail:

michael.defensor@usdoj.gov or *deborah.hemmes@usdoj.gov.*

Dated: February 4, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–3161 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, February 11, 2003.

PLACE: 5550 Friendship Boulevard, Fourth Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal to adopt rule providing for an administrative appeal for District of Columbia supervised release violators.
4. Adoption of final rule regarding supervision of military prisoners who are mandatorily released from prison.
5. Proposal to amend rules to consolidate conditions of release.

AGENCY CONTACT: Tom Hutchinson, Executive Office, United States Parole Commission, (301) 492–5307.

Dated: February 4, 2003.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–3129 Filed 2–5–03; 9:34 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11 a.m., Tuesday, February 11, 2003.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Hutchinson, Executive Office, United States Parole Commission, (301) 492–5307.

Dated: February 4, 2003.

Rockne J. Chickinell,

General Counsel, Parole Commission.

[FR Doc. 03–3130 Filed 2–5–03; 9:42 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage

Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020001 (Mar. 1, 2002)
CT020002 (Mar. 1, 2002)
CT020003 (Mar. 1, 2002)
CT020004 (Mar. 1, 2002)
CT020005 (Mar. 1, 2002)

Volume II

District of Columbia
DC020002 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)
Pennsylvania
PA020001 (Mar. 1, 2002)
PA020003 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020018 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)

Volume III

North Carolina
NC020050 (Mar. 2, 2002)

Volume IV

Illinois
IL020005 (Mar. 1, 2002)

Volume V

Kansas
KS020008 (Mar. 1, 2002)
Texas
TX020003 (Mar. 1, 2002)
TX020016 (Mar. 1, 2002)
TX020018 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)
TX020100 (Mar. 1, 2002)
TX020114 (Mar. 1, 2002)

Volume VI

Alaska
AK02001 (Mar. 1, 2002)
AK02006 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of January 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–2655 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Fan Maintenance Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 56.1000 and 57.1000; Notification of Commencement of Operations and Closing of Mines.

DATES: Submit comments on or before April 8, 2002.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reach at *Tarr-Jane@Msha.Gov.* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

§ 57.8525 requires that the main ventilation fans for an underground mine be maintained either according to manufacturers' recommendations or a written periodic schedule adopted by the mine operators. If the operator produces a mine-specific fan maintenance schedule, it must be made available for review by an authorized Representative of the Secretary of Labor. The records assure compliance with the standard and may serve as a warning device for possible ventilation problems before they occur.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the sue of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Action

§ 57.8525 requires that the main ventilation fans for an underground mine be maintained either according to manufacturers' recommendations or a written periodic schedule adopted by the mine operators. A regular fan maintenance schedule is necessary to assure this uninterrupted and vital supply of air. The maintenance is normally scheduled as recommended by the fan manufacturers. Regardless of regularity, based on the loads of individual fans, the records assure compliance with the standard and may serve as a warning device for possible ventilation problems before they occur.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Maintenance Record.

OMB Number: 1219–0012.

Recordkeeping: If the operator produces a mine-specific fan maintenance schedule, it must be made available for review by an unthorized Representative of the Secretary of Labor.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 8.

Estimated Time Per Respondent: 1.5 hours.

Total Burden Hours: 12 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this third day of February, 2003

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–3055 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on February 27–28, in Room N–3437 (A–C), U.S. Department of Labor, located at 200 Constitution Avenue, NW., Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. on February 27 until approximately 4 p.m. The meeting will reconvene on February 28 at 9 a.m. and end at approximately 12 noon.

The meeting will begin with an overview of activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Other agenda items include: An update on OSHA's enforcement, compliance assistance and partnership activities, and regulatory issues as well as a presentation by NIOSH on their programs. The agenda will also include a discussion about possible future committee projects.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Vivian Allen at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; fax 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Vivian Allen, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210 (phone: 202–693–1935; FAX: 202–693–1641; e-mail *Vivian.Allen@osha.gov*); or check the National Advisory Committee on Occupational Safety and Health information pages located at *www.osha.gov.*

Signed at Washington, DC, this 3rd day of February 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–3054 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–009)]

NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Wednesday, February 19, 2003, 8:30 a.m. to 5 p.m., Thursday, February 20, 2002, 8:30 a.m. to 5 p.m., and Friday, February 21, 2002, 8:30 a.m. to noon.

ADDRESSES: Holiday Inn Capitol, Columbia II Meeting Room, 500 C Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

• Report on the results of the San Diego Workshop and implications for Sun-Earth Connection (SEC).

• SEC status, including reports on Solar Terrestrial Probe and Living with a Star Lines.

• Report on the Applied Physics Laboratory Solar Probe Study.

• Discussion of Prognosis for Low Cost Access to Space.

• Discussion of Draft Office of Space Science Strategic Plan.

• Science results from High Energy Solar Spectroscopic Imager and Solar Anomalous and Magnetospheric Particle Explorer.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3110 Filed 2–6–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–010)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Graftel, Inc., of Rolling Meadows, IL, has applied for a partially exclusive patent license to practice the invention disclosed in NASA Case No. KSC–12220 entitled ''Current Signature Sensor'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The field of use will be the electric utility industry. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this notice must be received by February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: January 31, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–3109 Filed 2–6–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company, McGuire Nuclear Station, Units 1 and 2; Exemption

1.0 Background

The Duke power Company (the licensee) is the holder of Facility Operating License Nos. NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in Mecklenburg County, North Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) at subsection (a) of 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality accident monitoring system ''using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accident criticality occurs.'' Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specify the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) requires licensees to have a means to quickly identify personnel who have received a dose of 10 rads or more. Subsection (b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) exempts part 50 licensees (such as McGuire) from the requirements of paragraph (b).

By letter dated February 4, 1997, as supplemented March 19, 1997, Duke Power Company (the licensee) requested an exemption for all its nuclear plants from the requirements of 10 CFR 70.24. The staff reviewed the licensee's submittal and determined that procedures and design features made an inadvertent criticality in special nuclear materials handling or storage at McGuire unlikely, in accordance with General Design Criterion 62. Accordingly, the staff granted an Exemption on July 31, 1997. Part of the basis for that exemption was that the criticality parameter of k-effective (k_{eff}) would remain less than or equal to 0.95 when the spent fuel pool was filled with unborated water. By letter dated April 18, 2002, as supplemented on August 7 and October 9, 2002, and January 15, 2003, the licensee submitted an application for revisions to the McGuire Technical Specifications to address the spent fuel pool Boraflex degradation issues. The analysis supporting this application proposed to take partial credit for boron in the spent fuel pool water. Therefore, a part of the technical basis for which the 10 CFR 70.24 exemption was granted on July 31, 1997, has changed. The staff has reviewed the licensee's application and continues to find that existing procedures and design features make an inadvertent criticality in special nuclear materials handling or storage at McGuire unlikely.

3.0 Discussion

Pursuant to section 70.17 of 10 CFR, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The staff concludes, on the basis provided above, that the licensee has thus met the intent of 10 CFR 70.24 by the low probability of an inadvertent criticality in areas where fresh fuel could be present, by the licensee's adherence to General Design Criterion 63 regarding radiation monitoring, and

by provisions for personnel training and evacuation.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.17, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Duke Power Company an exemption from the requirements of 10 CFR 70.24(a)(1), (2), and (3) for McGuire, Units 1 and 2, on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 5054).

This exemption is effective upon issuance and shall expire on December 31, 2005.

Dated at Rockville, Maryland, this 31st day of January.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3066 Filed 2–6–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

OPEN MEETING NOTICE: The Performance Measurement Advisory Council (''PMAC'') will meet on Monday, March 3, 2003, from 1 p.m. to 4 p.m. eastern time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. This is the third and final meeting of the PMAC.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed include a review of program performance information in the budget, and review of the application of the Program Assessment Ratings Tool. An agenda may be obtained prior to the meeting at *http://www.whitehouse.gov/omb/budintegration/index.html.* Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395–4926.

Dated: January 31, 2003.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 03–3105 Filed 2–6–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25923; 812–12736]

ARK Funds, et al.; Notice of Application

February 3, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end investment companies to participate in a joint lending and borrowing facility.

Applicants: Allied Investment Advisers, Inc. (''AIA''); Allfirst Trust Company N.A. (''Allfirst Trust''); ARK Funds.

Filing Dates: The application was filed on December 28, 2001, and amended on December 19, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 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, c/o Alan C. Porter, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Nadya B. Roytblat, Assistant Director, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. ARK Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust.[1] AIA, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of ARK Funds. AIA is a wholly owned subsidiary of Allfirst Bank, a Federal Reserve member bank. Allfirst Trust, a wholly owned subsidiary of Allfirst Bank, serves as custodian, transfer agent and administrator for ARK Funds. An existing Commission order permits certain series of ARK Funds that are not money market funds to invest uninvested cash balances in one or more series of ARK Funds that are money market funds that comply with rule 2a–

[1] Applicants request that the relief also apply to any other existing or future registered open-end management investment company or series thereof that is advised by AIA or any person controlling, controlled by, or under common control with AIA or its successors (together with the series of ARK Funds, the ''Funds''). ''Successors'' are limited to any entities that result from AIA's reorganization into another jurisdiction or a change in the type of business organization. All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

7 under the Act (''Money Market Funds'').[2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as trade ''fails'' in which cash payment for a portfolio security sold by a Fund has been delayed.

3. If the Funds were to borrow money from a bank, the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the banks would earn for serving as a middleman between a borrower and a lender. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with significant savings when the cash position of the Funds is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which are normally effected promptly upon receipt, they often do not receive payment in settlement of the liquidation for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would enable the Funds to have access to immediate short-term liquidity without incurring custodian overdraft or other charges or lower investment returns.

7. While borrowing arrangements with banks may be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate'', both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investments in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the Credit Facility Team, as defined below, each day an Interfund Loan is made according to a formula established by each Fund's board of trustees (each, a ''Board''), intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Fund. The formula would be based on a publicly available rate (*e.g.*, Federal funds plus 25 basis points) that would vary so as to reflect changing bank loan rates. The Board of each Fund periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to it would be subject to the approval of the Board of each Fund.

9. The credit facility would be administered by an AIA investment professional (namely, a portfolio manager for the Money Market Funds), representatives of Allfirst Trust and of ARK Funds' accounting group (collectively, the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. On each business day Allfirst Trust, as the Funds' custodian, would provide the Credit Facility Team with data on the uninvested cash and borrowing requirements of all participating Funds. Applicants expect far more available uninvested cash each day than borrowing demand. Once the Credit Facility Team determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the portfolio manager on the Credit Facility Team). All allocations would require approval of at least one member of the Credit Facility Team other than the Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The Money Market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Teams believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the transaction.

11. The Credit Facility Team would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to

[2] ARK Funds, *et al.* ICA Rel. Nos. 25136 (Aug. 24, 2001) (notice) and 25163 (Sept. 19, 2001) (order).

the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), of the Fund, to ensure that both borrowing and lending Funds participate on an equitable basis.

12. AIA, through the Credit Facility Team, would administer the credit facility as a disinterested fiduciary in the best interests of the Funds' shareholders. Neither AIA nor Allfirst Trust would receive any additional fee in connection with the administration of the proposed credit facility. AIA and Allfirst Trust, however, may collect standard pricing and recordkeeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to AIA or Allfirst Trust in connection with an Interfund Loan would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having AIA as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) AIA, through the Credit Facility Team, would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither AIA nor Allfirst Trust would receive any additional compensation for services provided in connection with administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited

extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from, or less advantageous than, that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any Money Market Fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an

equitable basis among the Funds without the intervention of any portfolio manager of the Funds (other than the Money Market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require approval of at least one member of the Credit Facility Team who is not the Money Market Fund portfolio manager. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Fund has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Money Market Fund in which the lending Fund could otherwise invest and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. The Credit Facility Team will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the quarterly meetings of each Fund's Board.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and, (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, a Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3004 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

[3] If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47298; File No. 4–429]

Joint Industry Plan; Order Approving on a Temporary Basis Joint Amendment No. 4 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders, Trade-Throughs and Other Nonsubstantive Changes, as Modified by an Amendment Thereto, and Notice of Filing of Such Amendment

January 31, 2003.

I. Introduction

On September 24, 2002, October 1, 2002, October 9, 2002, November 6, 2002, and November 26, 2002, the International Stock Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the American Stock Exchange LLC (''Amex'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] an amendment (''Joint Amendment No. 4'') to the Options Intermarket Linkage Plan (''Linkage Plan'').[3]

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex,

Proposed Joint Amendment No. 4 was published for comment in the **Federal Register** on December 27, 2002.[4] No comments were received on the proposal. On January 28, 2003, January 28, 2003, January 29, 2003, January 29, 2003, and January 29, 2003, the ISE, the Phlx, the Amex, the PCX, and the CBOE, respectively, filed with the Commission an amendment to proposed Joint Amendment No. 4 to provide that the limitation on the liability for trade-throughs for the last seven minutes of the trading day would be effective for a one-year pilot period and to clarify that the limitation on liability would apply to each Satisfaction Order (''Pilot Amendment'').[5] This order approves Joint Amendment No. 4, as modified by the Pilot Amendment, on a temporary basis not to exceed 120 days, and solicits comment on the Pilot Amendment from interested persons.

II. Description of Proposed Joint Amendment No. 4

In proposed Joint Amendment No. 4, as modified by the Pilot Amendment, the Participants propose to clarify that the proposed limitation on liability for trade-throughs for the last seven minutes of the trading day would apply to the filling of 10 contracts per exchange, per transaction. Pursuant to the Pilot Amendment, this proposal would be effective for a one-year pilot period, and would apply to each Satisfaction Order. The proposed Linkage Plan amendment also would: (1) Decrease the time period a member must wait after sending a linkage order to a market before that member can trade through that market from 30 seconds to 20 seconds; (2) prohibit linkage fees for executing satisfaction orders; and (3) make other nonsubstantive revisions to the Linkage Plan.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Pilot Amendment, including whether the proposed Pilot Amendment 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 submissions, all subsequent amendments, all written statements with respect to the proposed Pilot Amendment that are filed with the Commission, and all written communications relating to the proposed Pilot Amendment 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 filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4–429 and should be submitted by February 28, 2003.

IV. Discussion

After careful consideration, the Commission finds that the proposed Joint Amendment to the Linkage Plan, as amended by the Pilot Amendment, is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed Joint Amendment, as modified by the Pilot Amendment, is consistent with section 11A of the Act,[7] and Rule 11Aa3–2 thereunder,[8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. In addition, the Commission finds, as described further below, that it is appropriate to approve summarily the proposed amendment to the Linkage Plan, as amended, upon publication of the notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[9]

The Participants have represented to the Commission that members of various exchanges have raised concerns regarding their obligations to fill Satisfaction Orders (which result after a trade-through [10]) at the close of trading in the underlying security. Specifically, these members are concerned that they may not have sufficient time to hedge the positions they acquire.[11] The Participants believe their proposal to limit liability for trade-throughs for the last five minutes of trading in the underlying security to the filling of 10 contracts per exchange, per transaction will protect small customer orders, yet establish a reasonable limit for their members' liability. The Participants represent that this proposal should not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under section 8(c)(i)(C) of the Linkage Plan.

The Pilot Amendment clarifies that the limitation on liability would apply to each Satisfaction Order. As amended, the proposal is limited to a one-year pilot period. The Commission believes this one-year pilot period will give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for trade-throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for trade-throughs near the end of the trading day leads to an increase in trade-throughs. The Commission expects the Participants to provide a report to the Commission at least sixty days prior to seeking permanent approval of the pilot program. The report should include information about the number and size of trade-throughs that occur during the last seven minutes of the trading day and the number and size of trade-throughs that occur during the rest of the trading day, the number and size of Satisfaction Orders that the Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the

CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, May 30, 2002, and January 29, 2003, respectively, the Commission approved amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001), 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002), and 47274 (January 29, 2003).

[4] *See* Securities Act Release No. 47028 (December 18, 2002), 67 FR 79171.

[5] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Charles Rogers, Executive Vice President, Phlx, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Jeffrey Burns, Assistant General Counsel, Amex, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; Kathryn L. Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; and Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan Katz, Secretary, dated January 29, 2003.

[6] In approving this proposed Linkage Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 240.11Aa3–2.

[9] 17 CFR 240.11Aa3–2(c)(2).

[10] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[11] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

Participants use the underlying market to hedge their options positions.

The Commission finds that the proposal to reduce the amount of time a member must wait after sending a linkage order to a market before that member can trade through that market from thirty seconds to twenty seconds is appropriate because the Linkage Plan will retain the requirement that a Participant respond to a Linkage order within 15 seconds of receipt of that order.[12]

The Commission also finds that the proposal to establish a general prohibition against Linkage fees for executing Satisfaction Orders is appropriate. An exchange will receive a Satisfaction Order only when it has traded through customer orders on another exchange. The Commission agrees with the Participants that an exchange that traded through another market should not be allowed to impose a fee on the aggrieved party that exercises its rights under the Linkage Plan to complain about a trade-through.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[13] and Rule 11Aa3–2(c)(4) thereunder,[14] that Joint Amendment No. 4, as modified by the Pilot Amendment, is approved until May 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3101 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 5058, January 31, 2003.

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, February 4, 2003.

CHANGE IN THE MEETING: Rescheduled Item.

The following item has been rescheduled to be considered at the Open Meeting of Thursday, February 6, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room: Regulation AC (Analyst Certification).

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 4, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3241 Filed 2–5–03; 12:41 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47297; File No. SR–Amex–2002–84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by American Stock Exchange LLC, Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto

January 31, 2003.

I. Introduction

On October 15, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the ''Linkage''). On December 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[4] The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On January 31, 2003, the Exchange filed Amendment No. 3 to the proposed rule change, which replaces Amendment No. 2 in its entirety.[6] This order approves the proposed rule change, provides notice of filing of Amendment No. 3 and grants accelerated approval to Amendment No. 3.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[7] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the ''80/20 Test'' contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Plan''),[8] which

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[12] The Participants have represented that they believe reducing the response time even further to five seconds would provide an opportunity for the transmittal of responses to orders, while also allowing their members to execute orders on their own exchanges in a timely manner.

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(4).

[15] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, from Jeffrey Burns, Assistant General Counsel, Amex, dated December 18, 2002 (''Amendment No. 1''). In Amendment No. 1, Amex clarified that it was not deleting its interim linkage rules at that time.

[4] *See* Securities Exchange Act Release No. 47066 (December 20, 2002), 67 FR 79180.

[5] *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 (''Amendment No. 2''). Amendment No. 2 was replaced with a subsequent amendment. Telephone call between Jeffrey Burns, Assistant General Counsel, Amex, and Jennifer Lewis, Attorney, Division, Commission, on January 31, 2003.

[6] *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 (''Amendment No. 3''). Amendment No. 3 replaces Amendment Nos. 1 and 2 in their entireties. In Amendment No. 3, the Exchange proposes to: (1) Delete its interim linkage rules; (2) reorder the proposed linkage rules as Amex Rules 940 through 944; (3) amend the definition of ''Linkage Order'' contained in proposed Amex Rule 940 to state that such orders are immediate or cancel orders; (4) amend the definition of ''Eligible Market Maker'' contained in proposed Amex Rule 940 to state that such market maker is participating in the Exchange's automatic execution system, if available; (5) amend proposed Amex Rule 941 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically pursuant to commentary .01(d) to Amex Rule 933; (6) amend proposed Amex Rule 942 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (7) amend proposed Amex Rule 942 to clarify that members may not engage in a pattern or practice of trading through; (8) clarify that its existing fees for specialists and market makers will apply to certain Linkage orders; and (9) to make other non-substantive grammatical revisions to the proposed rules.

[7] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[8] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos.

provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes a fee, which will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through). These fees are the same fees applicable to Amex specialists and market makers.

III. Discussion

The Commission has reviewed the Amex's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and with the requirements of section 6(b).[10] In particular the Commission finds that the proposed rule change 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[11] The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act [12] in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the Amex will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 3 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 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 Amendment No. 3 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 Exchange. All submissions should refer to File No. SR–Amex–2002–84 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2002–84), be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3100 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[9] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47294; File No. SR–CBOE–2002–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On October 9, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the ''Linkage''). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[3] The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47052 (December 19, 2002), 67 FR 79189.

[4] *See* letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of ''Linkage Order'' contained in proposed CBOE Rule 6.80 to state that such orders are immediate or cancel orders; (2) amend the definition of ''Reference Price'' contained in proposed CBOE Rule 6.80 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Plan''); (3) amend proposed CBOE Rule 6.81 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically; (4) amend proposed CBOE Rule 6.83 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (5) amend proposed CBOE Rule 942 to clarify that members may not engage in a pattern or practice of trading through; and (6) establish fees for certain Linkage orders.

regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the ''80/20 Test'' contained in section 8(b)(iii) of the Plan,[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes the fees that will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through).

III. Discussion

The Commission has reviewed the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9] The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act [10] in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the CBOE will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 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 Amendment No. 1 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 Exchange. All submissions should refer to File No. SR–CBOE–2002–61 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2002–61), be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3098 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.c. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47296; File No. SR–Phlx–2002–67]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On October 29, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the ''Linkage''). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[3] The Commission received no comments on the proposed rule change. On January 31, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 47062 (December 20, 2002), 67 FR 79222.

[4] *See* letter from Richard Rudolph, Director and Counsel, Phlx, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of ''Reference Price'' contained in proposed Phlx Rule 1083 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Plan''); (2) amend the definition of ''Linkage Order'' contained in proposed Phlx Rule 1083 to state that such orders are ''Immediate or Cancel Orders''; (3) amend proposed Phlx Rule 1083 to define an ''Immediate or Cancel Order'' as a limited price order that is to be executed in whole or in part as soon as such order is received, and the portion not executed, if any, is immediately cancelled; (4) amend proposed Phlx Rule 1084 to clarify when members may send linkage orders when markets are non-firm; (5) amend proposed Phlx Rule 1084 to include a provision regarding mitigation of damages; (6) amend proposed Phlx

proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the ''80/20 Test'' contained in section 8(b)(iii) of the Plan,[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange.

III. Discussion

The Commission has reviewed the Phlx's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9]

The Commission believes that the rules proposed by the Phlx will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 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 Amendment No. 1 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 Exchange. All submissions should refer to File No. SR–Phlx–2002–67 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2002–67), be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3099 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

Rule 1085 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (7) amend proposed Phlx Rule 1085 to clarify that members may not engage in a pattern or practice of trading through; and (8) make other non-substantive revisions to the proposed rules.

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States—Morocco Free Trade Agreement

AGENCIES: Office of the United States Trade Representative and Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Morocco Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, March 28, 2003, to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR0067@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be

addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative notified the Congress of the President's intent to enter into trade negotiations with Morocco. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/2002-10-01-morocco-house.PDF* and *http://www.ustr.gov/releases/2002/2002-10-01-morocco-senate.PDF,* respectively. The TPSC received written submissions and, on November 21, 2003, conducted a public hearing to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63187) (Oct. 10, 2002). The first round of the U.S.-Morocco FTA negotiations took place January 21–24 in Washington, DC. The next round is scheduled for March 24 in Morocco and negotiations are expected to be completed before the end of 2003.

The U.S.-Morocco FTA will build on the bilateral work that began in 1995 under the U.S.-Morocco Trade and Investment Framework Agreement. The U.S.-Morocco FTA will seek to eliminate duties and unjustified barriers to trade for both U.S.- and Moroccan-origin goods and also address trade in services, trade in agricultural products, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance. The FTA will also help to support and accelerate economic and political reforms already underway in Morocco.

Section 2102(c)(5) of the Bipartisan Trade Promotion Act of 2002, 19 U.S.C. 3805(c)(5), directs the President to ''review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report public.'' USTR and the Department of Labor will be conducting the employment reviews through the interagency Trade Policy Staff Committee (TPSC). The employment impact review will be based on the following elements, which are modeled, to the extent appropriate, after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

2. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0067@ustr.gov.* Persons making submissions by e-mail should use the following subject line: a Morocco Employment Review.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–2971 Filed 2–6–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29303]

RIN 2120–AG58

Policy Regarding Airport Rates and Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed policy, withdrawal.

SUMMARY: The FAA is withdrawing a previously published Advance Notice of Proposed Policy that sought suggestions for replacement provisions for the portions of the Policy Statement Regarding Airport Rates and Charges that were vacated by the United States Court of Appeals for the District of Columbia Circuit. We are withdrawing the document because the Department of Transportation is considering similar rate and charge issues in its study of congestion pricing at airports.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Director, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3053.

SUPPLEMENTARY INFORMATION:

Background

In June 1996, the FAA adopted a policy for evaluating the reasonableness of landing fees and other charges paid by air carriers to airports (61 FR 31994, June 21, 1996). The United States Court

of Appeals for the District of Columbia Circuit partially vacated the policy, disallowing the portion dealing with historic cost valuation of airport property. *Air Transport Association of America* v. *Department of Transportation,* 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. The Department of Transportation, Office of the Secretary, and the FAA published an Advance Notice of Proposed Policy seeking suggestions for replacement provisions of those portions the Court vacated (63 FR 43228, August 12, 1998).

The Department of Transportation is conducting studies related to the use of market pricing to manage demand at congested airports. Substantial overlap of the issues exists between the Department study and the published Advance Notice of Proposed Policy Regarding Airport Rates and Charges. To avoid duplication of effort and resources, and to allow more complete analysis of the issues, the FAA is withdrawing the Advance Notice of Proposed Policy Regarding Airport Rates and Charges.

Discussion of Comments

In response to the advance notice, we received comments from the Air Transport Association (ATA), Airports Council International '' North America (ACI–NA), National Business Travel Association, the Kauai Helicopter Operators Association, and 13 airports. The time period for comments and reply comments was extended at the request of ATA and ACI–NA.

Commenters offer their perspective on existing fee structures and methodologies, distinctions between fees charged for airfield versus non-airfield assets, and evidence of airport monopoly power. Comments from ATA, ACI–NA and Los Angeles World Airports include economic discussions from consulting economists. In general, air carriers favor historical cost accounting as the basis for aeronautical rates and charges, while airports favor basing rates and charges on fair market value of aeronautical assets. Air carriers express concern that any new policy should prevent airports from adding imputed interest to funds derived from airfield and other essential aeronautical facilities. Issues and recommendations presented by commenters will require further study, but will not be pursued within the course of the Policy Regarding Airport Rates and Charges addressed by this document, because the Department of Transportation will consider these and related issues in its study of congestion pricing at airports.

Conclusion

The Department of Transportation's current study of congestion pricing at airports will encompass many of the rates and charges issues addressed in the Advance Notice of Proposed Policy entitled Policy Regarding Airport Rates and Charges. Therefore, the FAA withdraws the Advance Notice of Proposed Policy published at 63 FR 43228 on August 12, 1998. Withdrawal of the Advance Notice of Proposed Policy does not preclude the FAA from issuing another notice on the subject matter in the future or commit the agency to any future course of action.

Issued in Washington, DC, on January 31, 2003.

Woodie Woodward,

Associate Administrator for Airports.

[FR Doc. 03–2694 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of fiscal year 2003 funds; solicitation of grant applications.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the availability of funds in fiscal year (FY) 2003 for the Over-the-road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5310 *note.* The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** notice on September 24, 1998. The OTRB Accessibility Program calls for national solicitation of applicants, with grantees to be selected on a competitive basis. Federal transmit funds are available to intercity fixed-route providers and other OTRB providers are up to 90 percent of the project cost.

A total of $24.3 million is available for the program over the life of TEA–21. The guaranteed level of funding available for intercity fixed-route service was $2 million in FY 1999, $2 million in FY 2000, $3 million in FY 2001, $5.25 million in FY 2002, and is $5.25 million in FY 2003, for a total of $17.5 million . The guaranteed level of funding for other over-the-road bus service, including charter and tour bus, is $1.7 million per year from FY 2000 to FY 2003, for a total of $6.8 million.

FTA expects that in FY 2003, $5.25 million will be appropriated for intercity fixed-route service providers and $1.7 million will be appropriated for other over-the-road bus service providers. This announcement describes application procedures for the OTRB Accessibility Program and the procedures FTA will use to determine which projects it will fund.

This announcement is available on the Internet on the FTA Web site at: *http://www.fta.dot.gov/library/legal/federalregister/2003/index.html.* FTA will announce final selections on the Web site and in the **Federal Register**.

DATES: Complete applications for OTRB Accessibility Program grants must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business March 28, 2003. The appropriate FTA regional office is that office which serves the state in which an applicant's headquarters office is located. FTA will announce grant selections in June 2003.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366–2053, e-mail: *blenda.younger@fta.dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. General Program Information

A. Authority

The program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5310 *note.* Although FY 2003 funds have not been appropriated, FTA is issuing the solicitation notice now to get the application cycle started.

B. Background

Over-the-road buses are used in intercity fixed-route service as well as other services, such as commuter, charter, and tour bus services. These services are an important element of the U.S. transportation system. TEA–21

authorized FTA's Over-the-road Bus Accessibility Program to assist over-the-road bus operators in complying with the Department's Over-the-road Bus Accessibility rule, ''Transportation for Individuals with Disabilities'' (49 CFR part 37) published in a **Federal Register** notice on September 24, 1998.

Summary of DOT's Over-the-Road Bus Accessibility Rule

Deadlines for Acquiring Accessible Vehicles. Under the over-the-road bus accessibility rule, all new buses obtained by large (Class I carriers, *i.e.,* those who gross annual operating revenues of $5.3 million or more), fixed-route carriers after October 30, 2000 must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule requires 50 percent of the fixed-route carriers' fleets to be accessible by 2006, and 100 percent of the vehicles in their fleets to be accessible by 2012. The buses acquired by small (gross operating revenues of less than $5.3 million annually) fixed-route providers after October 29, 2001 also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small providers also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies have to provide service in an accessible bus on 48 hours' advance notice. Fixed-route companies must also provide this kind of service on an interim basis until their fleets are completely accessible.

Deadlines for Delivering Accessible Service. The rules for delivering accessible motorcoach service went into effect October 29, 2001 for large fixed-route, charter, tour and other demand-responsive motorcoach companies. The rules went into effect for small operators on October 28, 2002. After these dates, companies must provide service in an accessible coach to a passenger who requests it and gives 48 hours' advance notice. Small companies may provide equivalent service, instead of acquiring accessible coaches. This equivalent service may be provided in an alternate vehicle (*e.g.,* a van), provided that the service allows passengers to travel in their own wheelchairs.

Specifications describing the design features that an over-the-road bus must have to be readily accessible to and usable by persons who use wheelchairs or other mobility aids required by the ''Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles: Over-the-Bus Buses'' rule (36 CFR part 1192) were published in another **Federal Register** notice on September 28, 1998.

C. Scope

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, and efficient, and offers flexibility of choices is a key strategic goal of the Department of Transportation. Over-thee-road Bus Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and provide training to ensure that drivers and other understand have to use accessibility features as well as how to treat patrons with disabilities.

D. Eligible Applicants

Grants will be made directly to operators of over-the-road buses. Intercity, fixed-route over-the-road bus service providers may apply for the $5.25 million that FTA expects will be available to intercity fixed-route providers in FY 2003. Other over-the-road bus service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for the $1.7 million expected to be available in FY 2003 for these providers. OTRB operators who provide intercity, fixed-route service and another type of service, such as commuter, charter or tour, may apply for both categories of funds with a single application. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from most other FTA programs for which the direct applicant must be a state or local public body.

E. Vehicle and Service Definitions

An ''over-the-road bus'' is a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-routed over-the-road bus service is regularly scheduled bus service for the general public, using an over-the-road bus that: Operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points.

Other over-the-road bus service means any other transportation using over-the-road buses, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions). While some commuter service may also serve the needs of some intercity fixed-route passengers, the statute includes commuter service in the definition of ''other'' service. Commuter service providers should apply for these funds, even though the services designed to meet the needs of commuters may also provide service to intercity fixed-route passengers on an incidental basis. If a service provider can document that more than 50 percent of its passengers are using the service as intercity fixed-route service, the provider may apply for the funds designated for intercity fixed-route operators.

F. Eligible Projects

Projects to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule (49 CFR Part 37) are eligible for funding. Incremental capital costs eligible for funding include adding lifts, tie-downs, moveable seats, doors and all labor costs associated with work on the vehicle needed to make vehicles accessible. Retrofitting vehicles with such accessibility components is also an eligible expense. Please see Buy America section for further determination of eligibility.

FTA may award funds for costs already incurred by the applicants. Any new wheelchair accessible vehicles delivered since June 8, 1998, the date that the Transportation Equity Act for the 21st Century was effective, are eligible for funding under the program. Vehicles of any age that have been retrofitted with lifts and other accessibility components since June 8, 1998 are also eligible for funding.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of over-the-road bus services for these purposes are eligible expenses.

FTA will not fund the incremental costs of acquiring used wheelchair accessible OTRBs, as it may be impossible to verify whether or not FTA funds were already used to make the vehicles accessible. Also, it would be difficult to place a value on the accessibility features based upon the depreciated value of the vehicle. FTA

wishes to increase the number of wheelchair accessible over-the-road buses available to persons with disabilities throughout the country, and the purchase of used accessible vehicles, whether or not they were previously funded by FTA, does not further this objective.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Projected Action is a national technical assistance program to promote cooperation between the disability community and the transportation industry. Project Action provides training, resources and technical assistance to thousands of disability organizations, consumers with disabilities, and transportation operators. It maintains a resource center with the most up-to-date information on transportation accessibility. Project Action may be contacted at: Project Action, 700 Thirteenth Street, NW., Suite 200, Washington, DC 20590, Phone: 1–800–659–6428, Internet address: *http://www.projectaction.org/.*

G. Grant Criteria

FTA will award grants based on:

1. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

2. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

3. The extent to which the over-the-road bus operator acquires equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule;

4. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant; and

5. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding that may already have been awarded to applicants in prior years.

H. Grant Requirements

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Section 5311 under Title 49, United States Code). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

Those applicants selected for funding will be required to comply with all of the Federal requirements applicable to the OTRB Accessibility Program, provided in the comprehensive compilation below. Federal requirements apply to the incremental cost of adding wheelchair accessibility features to new vehicles or when retrofitting existing vehicles, not to the entire vehicle. All applicants are advised to read the entire list of requirements to be confident of their responsibilities and commitments for compliance.

The authority for these requirements are provided by the Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, DOT and FTA regulations at 49 CFR, and FTA Circulars.

1. Buy America

In the OTRB Accessibility program, FTA's Buy American regulations, 49 CFR part 661, apply to the incremental capital cost of making vehicles accessible. Those regulations do not apply to associated labor costs. The following discussion relates to the contract between the grantee and the prime contractor.

The ''General Requirements'' found at 49 CFR 661.5 apply to that portion of the accessibility system being funded. That section requires that all of the manufacturing processes for the product take place in the United States and that all components of the product be made in the United States. A component is considered domestic if it is manufactured in the U.S.A., regardless of the origin of its subcomponents. The lift, the moveable seats, and the securement devices will all be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States. Should a recipient choose to request funding for only a specific component, such as the lift or the securement device, then the Buy America requirements would apply only to that item funded by FTA.

Three exceptions to the general requirements can be found at 49 CFR 661.7: first, a waiver may be requested when the application of the regulation is not in the public interest; second, a waiver may be requested if the materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; and third, a price differential waiver may be requested where the results of competitive procurement show that there is a 25 percent price difference between the domestic and foreign products. FTA approval of a waiver must be received by the recipient of FTA funds prior to the execution of contract.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal ''small purchase'' threshold, which is currently $100,000. This waiver can be found in 49 CFR 661.7, Appendix A(e). In section 3038(b) of TEA–21, Congress authorized FTA financing of the incremental capital costs of compliance with DOT's OTRB accessibility rule. Consistent with this provision, the small purchase waiver applies only to the incremental cost of the accessibility features FTA is funding. Where more then one bus is purchased, the grantee must consider the incremental cost increase for the entire procurement when determining if the small purchase waiver applies. For example, if $30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of $90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus manufacturer that all items included in the incremental cost for which the applicant is applying for funds meet Buy America requirements.

The Buy America regulations can be found at *http://www.fta.dot.gov/library/legal/buyamer/.*

2. Labor Protection

Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the

union. The grant applicant can facilitate Department of Labor (DOL) certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant, if any. Receiving funds under the OTRB Accessibility program, however, will not require the grantee's employees to be represented by organized labor. Nothing in the labor protection provisions in 49 U.S.C. 5333(b) requires a motorcoach operator to become a union carrier or encourages union organizing in any manner. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Applicants must identify any labor organizations that may represent their employees and all labor organizations that represent the employees of any other transit providers in the service area of the project.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

However, for each independent labor organization (*i.e.,* a union that it is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company, and associated union information.

DOL issued a **Federal Register** notice addressing the new TEA–21 programs, including the OTRB Accessibility Program, ''Amendment to Section 5333(b) Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act of the 21st Century (TEA–21)''; Final Rule, dated July 28, 1999. FTA issued a ''Dear Colleague'' letter, dated December 5, 2000, addressing DOL processing of grant applications. Attached to the letter is an application checklist which provides information that DOL must have in order to review and certify FTA grant applications. This letter and attachment can be found at: *http://www.fta.dot.gov/office/public/c0019.html.* Questions concerning protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Department of Labor, 200 Constitution Avenue, NW., Room N–5411, Washington, DC 20210; telephone (202) 693–0126, fax (202) 219–5338.

3. Planning

Applicants are encouraged to notify the appropriate state departments of transportation and metropolitan planning organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public, and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by states and MPOs also is encouraged, but is not required.

4. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

A. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Government-wide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) above, it shall indicate so in its signature page and provide a written explanation to FTA.

B. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees be engaged in the performance of the grant be given a copy of the statement required by paragraph (1) above;

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

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(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the

applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

5. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(a) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(b) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(c) Will establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(d) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(e) Will comply with all statues relating to nondiscrimination including, but not limited to:

(1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(2) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(4) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(5) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(6) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(7) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(8) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.,* relating to nondiscrimination in the sale, rental, or financing of housing;

(9) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(10) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(f) Will comply, or has complied, with the requirements of Titles II and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.,* which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 46012 *et seq.,* and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replace dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurance provided herein; and

(9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall separate any conflicting provisions.

(g) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(h) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(i) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(j) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 *note;*

(2) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 *note;*

(3) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 *note;*

(4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 *note;*

(5) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(6) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.;*

(7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.;*

(8) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.;* and

(9) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national state, or local significance used in a transit project as required by 49 U.S.C. 303.

(k) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(l) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 *note,* and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*

(m) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(n) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency.

(o) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(p) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(q) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(r) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulation, ''Protection of Human Subjects,'' 49 CFR part 11.

(s) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held

for research, teaching, or other activities supported by FTA assistance.

(t) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2000.''

(u) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

6. Lobbying Certification for an Application Exceeding $100,000

An applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. Consequently, FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting category ''II'' on the Signature Page at the end of this document.

(a) As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

(b) The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

II. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the OTRB Accessibility program. Grant awards will be made on a competitive basis. Applicants should submit 3 copies of their proposal application, consistent with the application format provided at Appendix A, to the appropriate regional office. Project proposal applications must be received by FTA no later than March 28, 2003. The OTRB operators should submit the application to the office in the region in which its headquarters office is located (see Appendix B). The application should provide information on all items for which you are requesting funding in FY 2003. The application must include the following elements:

1. Applicant Information. This addresses basic identifying information, including:

a. Company name.

b. Contact information for notification of project selection: Contact name, address, fax and phone number.

c. Description of services provided by company.

d. For fixed-route carriers, whether you are a large (Class I, with gross annual operating revenues of $5.3 million or more) or small (gross operating revenues of less than $5.3 million annually) carrier.

e. Existing fleet and employee information, including number of over-the-road buses used for intercity fixed-route service and other service and number of employees.

f. Estimate of the proportion of service, if any, that is intercity fixed-route.

g. Description of your technical, legal, and financial capacity to implement the proposed project.

2. Project Information. Every application must:

a. Provide the Federal amount requested for each purpose for which funds are sought.

b. How intercity fixed-route service meets the definition of intercity fixed-route service, including how service makes meaningful connections with scheduled intercity bus service to more distant points.

c. Document matching funds, including amount and source.

d. Describe project, including components to be funded, *i.e.,* lifts, tie-downs, moveable seats, etc., and/or training.

e. Provide project time-line, including significant milestones such as date or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

f. Address each of the five statutory evaluation criteria.

g. Complete Standard Form 424, ''Federal Assistance''.

3. Labor Information. a. Identify any labor organizations that may represent your employees and all labor organizations that represent the employees of any transit providers in the service area of the project. For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

b. For each independent labor organization (*i.e.,* a union that is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

c. Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company and associated union information.

III. Grant Application Review Process

Applications are to be submitted to the appropriate FTA Regional Office by the close of business on March 28, 2003. FTA will screen all applications to determine whether all required eligibility elements, as described in Section 2 of the application, are present. An FTA evaluation team will evaluate each application according to the criteria described in this announcement.

A. Notification

FTA expects to notify all applicants, both those selected for funding and those not selected, in June 2003.

Projects selected for funding will be published in a **Federal Register** notice.

Dated: February 3, 2003.

Jennifer L. Dorn,

Administrator.

Appendix—Over-the-Road Bus Accessibility Program Project Proposal Application (PAPER)

1. Applicant Information

A. *Company Name:*

B. *For Notification of Project Selection Contact:*

Name of Individual:
Address:
Telephone number:

C. *Describe Services Provided by Company, Including Areas Served:*

D. *Intercity Fixed-Route Carriers:*

_____Large/Class I (gross annual operating revenues of $5.3 Million or more)
_____Small (gross annual revenues of less than $5.3 Million)

E. *Existing Fleet and Employee Information:*

#_____Over-the-road Buses in fleet used for Intercity Fixed-route Service
#_____Over-the-road Buses in fleet used for Other Service, *e.g.*, Charter, Tour, & Commuter
#_____Employees

F. *If you provide both intercity fixed-route service and another type of service, such as commuter, charter or tour service, please provide an estimate of the proportion of your service that is intercity*

_____% of services is intercity fixed-route

G. *Describe your technical legal, and financial capacity to implement the proposed project.*

2. Project Information

A. *Federal Amount Requested (Up to 90% Federal Share):*

Intercity Fixed Route Service

$_____for #_____New Over-the-road Buses
$_____for #_____Retrofits
$_____ for #_____Employees–Training

If funds are being requested for intercity fixed-route services, please describe how the service meets the definition of intercity fixed-route service, including how the service makes meaningful connections with scheduled intercity bus service to more distant points.

Other Service (Commuter, Charter, or Tour)

$_____for #_____New Over-the-road Buses
$_____for #_____Retrofits
$_____for #_____Employees–Training

B. *Document Matching Funds, including Amount and Source:*

C. *Describe Project, including Components to be funded, i.e., Lifts, Tie-downs, Moveable Seats, etc. and/or Training:*

D. *Provide Project Time Line, including Significant Milestones such as Date of Contract for Purchase of Vehicle(s), and actual or expected delivery date of vehicles:*

E. *Project Evaluation Criteria—Projects will be evaluated according to the following criteria:*

The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant. (20 points)

The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities. (20 points)

The extent to which the over-the-road bus operator acquired equipment required by DOT's over-the-road bus accessibility rule prior to the required time-frame in the rule. (20 points)

The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant. (20 points)

The impact of accessibility requirements on the continuation of over-the-road bus service with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals. (20 points)

Appendix B—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine

Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II—New York, New Jersey, Virgin Islands

Letitia Thompson, FTA Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC

Susan Schruth, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico

Jerry Franklin, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan

Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, (312) 353–2789.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma

Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII—Iowa, Nebraska, Kansas, Missouri

Mokhtee Ahmad, Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah

Lee Waddleton, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam

Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133.

Region X—Washington, Oregon, Idaho, Alaska

Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. 03–3080 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 31, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 10, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 Final.

Type of Review: Extension.

Title: Information with Respect to Certain Foreign-Owned Corporations.

Description: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS International examiners to better audit the returns of U.S. corporations engaged in crossborder transactions with a related party.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 63,000.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 630,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–2992 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component: Change of Application Deadline

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change of application deadline.

SUMMARY: On February 4, 2003, the Community Development Financial Institutions Fund (the ''Fund'') announced in a NOFA for the Financial Assistance Component of the CDFI Program (68 FR 5738) that the deadline for applications for assistance through the Financial Assistance Component was March 10, 2003. This notice is to announce that the application deadline for the FY 2003 funding round of the Financial Assistance Component of the CDFI Program has been extended to March 17, 2003. All other information and requirements set forth in the February 4, 2003, NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: February 4, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–3108 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–26–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–26–96 (TD 8825), Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups (§ 1.382–8).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the Internet, *CAROL.A.SAVAGE@irs.gov.,* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96.

Abstract: Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3093 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208172–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–208172–91 (TD 8787), Basis Reduction Due to Discharge of Indebtedness, (§§ 1.108–4,and 1.1017–1).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet, *CAROL.A.SAVAGE@irs.gov.,* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Basis Reduction Due to Discharge of Indebtedness.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91.

Abstract: This regulation provides ordering rules for the reduction of bases of property under Internal Revenue Code sections 108 and 1017. The regulation affects taxpayers that exclude discharge of indebtedness from gross income under Code section 108. The collection of information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(l) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3094 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (section 1.613A–3(l)).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75.

Abstract: Section 1.613A–3(1) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 30, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3095 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98–4, Simple IRA Plan Guidance

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms, instructions, and notice should be directed to Carol Savage, (202) 622–3945, or through the Internet *CAROL.A.SAVAGE@irs.gov.,* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5304–SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution, Form 5305–SIMPLE; SIMPLE IRA Plan Guidance(Notice 98–4).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institutions. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes being made to the information collections at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, and individuals. *Estimated Number of Respondents:* 600,000.

Estimated Time Per Respondent: 3 hours, 33 minutes.

Estimated Total Annual Burden Hours: 2,127,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3096 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to

Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 9, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By Legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–3021 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 9, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–3022 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 68, No. 26

Friday, February 7, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–059–1]

Movement and Importation of Fruits and Vegetables

Correction

In rule document 03–1211 beginning on page 2681 in the issue of Tuesday, January 21, 2003, make the following correction:

§319.56–2x [Corrected]

On page 2684, in the table, in § 319.56–2x, under the heading ''Plant part(s)'', in the first line ''of'' should read, ''or''.

[FR Doc. C3–1211 Filed 2–6–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47025; File No. SR–NYSE–2002–59]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Pilot Programs for Mediation and Administrative Conferences

December 18, 2002.

Correction

In notice document 02–32738 beginning on page 79214 in the issue of Friday, December 27, 2002, make the following correction:

On page 79214, in the third column, include the date as set forth above.

[FR Doc. C2–32738 Filed 2–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 7, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistant Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **Army:** Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; **DOT:** Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; **COE:** Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; **Energy:** Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; **Interior:** Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; **Navy:** Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; **VA:** Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: January 30, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/7/03

Suitable/Available Properties

Buildings (by State)

California

Bldg. 199
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310003
Status: Excess
Comment: 2186 sq. ft., gold pro shop, presence of asbestos/lead paint

Indiana

Office/Training Center
Newburgh Locks & Dam
Newburgh Co: IN 47630–
Landholding Agency: COE
Property Number: 31200310014
Status: Excess
Comment: 3000 sq. ft., steel structure, off-site use only

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006

Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft., 2 story wood frame; two story residence; potential utilities; needs major rehab

Chaumont Facility
National Park
Mammouth Cave Co: Edmonson KY 42259–
Landholding Agency: 61200310001
Status: Excess
Comment: 5650 sq. ft., most recent use—office, off-site use only

Massachusetts

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Landholding Agency: COE
Property Number: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only

Mississippi

Quonset Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220010
Status: Unutilized
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220011
Status: Unutilized
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220012
Status: Unutilized
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220013
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220014
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220015
Status: Unutilized
Comment: 270 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

New Jersey

Bldg. MA–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310007
Status: Unutilized
Comment: 7200 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 5A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310008
Status: Unutilized
Comment: 687 sq. ft., most recent use—storage, off-site use only

Bldg. R–17
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310009
Status: Unutilized
Comment: 1,134 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C–32A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310010
Status: Unutilized
Comment: 255 sq. ft., off-site use only

Bldg. S–331
Naval Weapons Station
Colts Neck Co: NJ 07722–

Landholding Agency: Navy
Property Number: 77200310011
Status: Unutilized
Comment: 256 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 513
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310012
Status: Unutilized
Comment: 1647 sq. ft., presence of asbestos/lead paint, off-site use only

New York

Bldg. 0158
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200310005
Status: Unutilized
Comment: 12,436 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 0324
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200310006
Status: Unutilized
Comment: 3886 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence
506 Reservoir Rd.
Paint Creek Lake
Bainbridge Co: Highland OH 45612–
Landholding Agency: COE
Property Number: 31200210008
Status: Unutilized
Comment: 1200 sq. ft., needs repair, off-site use only

Residence
4969 Dillon Dam Road
Dillon Lake
Zanesville Co: OH 43701–
Landholding Agency: COE
Property Number: 31200210009
Status: Unutilized
Comment: 1800 sq. ft., off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethleham Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

Residence
Tract 109
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240002
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence
Tract 118
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240003
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 131
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240004
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 141
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240005
Status: Excess
Comment: 936 sq. ft., off-site use only

Residence
Tract 514
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240006
Status: Excess

Comment: 1426 sq. ft., off-site use only

Residence
Tract 516
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240007
Status: Excess
Comment: 2264 sq. ft., off-site use only

Residence/Tract 103
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310015
Status: Excess
Comment: 1424 sq. ft., wood frame, off-site use only

Residence/Tract 117
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310016
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 127
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310017
Status: Excess
Comment: 1386 sq. ft., wood frame, off-site use only

Residence/Tract 154
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310018
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 158
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310019
Status: Excess
Comment: 816 sq. ft., wood frame, off-site use only

Residence/Tract 401
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310020
Status: Excess
Comment: 1268 sq. ft., wood frame, off-site use only

Residence/Tract 424
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310021
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 523
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310022
Status: Excess
Comment: 1284 sq. ft., wood frame, off-site use only

Virginia

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmater's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Landholding Agency: COE
Proprerty Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076

Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area

Florida

Communications Annex Site
S. Allapattah Road
Homestead Co: Miami-Dade FL
Landholding Agency: GSA
Property Number: 54200310008
Status: Excess
Comment: approx. 20 acres w/deteriorated building, no public water, within 100-year floodplain, approx. 17 acres identified as wetlands, subject to all applicable laws/regulations
GSA Number: 4–D–FL–1078–4A

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–

Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 mile east of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tract 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tract 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities

Tract 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tracts 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tracts 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres; most recent use—hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Tract No. F–610
Buckhorn Lake Project
Buckhorn Co: KY 41721–
Landholding Agency: COE
Property Number: 31200240001
Status: Underutilized
Comment: 0.64 acres, encroachments, most recent use—flood control purposes

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo La 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, LA
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Maryland

VA Medical Center
9600 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20, and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2, 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Tract 150
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 311990100923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–

Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 3119010930
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area
Landholding Agency: COE
Property Number: 3119010932
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Comment: 12 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Comment: 96 acres; subject to existing easement

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Cumberland Co: Stewart TN 37015–
Location: 2½ downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easement

Tracts 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW of Bumpus Mills
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easement

Tracts 9707
Barkley Lake
Palmyer Co: Montgomery TN: 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easement

Tracts 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easement

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easement

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized

Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 52
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formally landfill, portion near flammable materials, railroad crosses property, potential utilities

Washington

15.1 acres
Road I8NE & Road 36NE
Coulee City Co: Grant WA 99115–
Landholding Agency: Interior
Property Number: 61200310002
Status: Excess
Comment: subject to existing easements/substation site

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft.; 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft., 2 story brick/wood frame residence, needs rehab, secured area with alternate access

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre, most recent use—free campground

Dashields Locks and Dam
Glenwillard, PA
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Suitable/To Be Excessed

Land (by State)

Georgia

Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species

Lake Sidney Lanier—3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species

Kansas

Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342–
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reason: Extensive deterioration

California

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: Contamination

Bldg. 513
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310004
Status: Excess
Reason: Extensive deterioration

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Georgia

Prop. ID HAR18015
Hartwell Project
Hartwell Co: GA 30643–
Landholding Agency: COE
Property Number: 31200310001
Status: Unutilized
Reason: Extensive deterioration

Prop. ID RBR17830
Russell Dam Dr.
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310002
Status: Unutilized
Reason: Secured Area

Prop. ID RBR17832
Russell Dam Drive
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310003
Status: Unutilized
Reason: Secured Area

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574–
Landholding Agency: COE
Property Number: 31200220002
Status: Excess
Reason: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized
Reason: Extensive deterioration

No. 01020
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized
Reason: Extensive deterioration

No. 61001
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized
Reason: Extensive deterioration

Bldg. #1
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220003
Status: Excess
Reason: Extensive deterioration

Bldg. #2
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220004
Status: Excess
Reason: Extensive deterioration

Bldg. #4
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220005
Status: Excess
Reason: Extensive deterioration

Comfort Station
Clinton Lake Project
Lawrence Co: Douglas KS 66049–
Landholding Agency: COE
Property Number: 31200220006
Status: Excess
Reason: Extensive deterioration

Privie
Perry Lake
Perry Co: Jefferson KS 66074–
Landholding Agency: COE
Property Number: 31200310004
Status: Unutilized
Reason: Extensive deterioration

Shower
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310005
Status Unutilized
Reason: Extensive deterioration

Tool Shed
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310006
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway

Maryland

Bldg.
U.S. Naval Academy
95 Bowyer Road
Annapolis Co: Anne Arundel MD 21402–
Landholding Agency: Navy
Property Number: 77200310024
Status: Excess
Reason: Extensive deterioration

Massachusetts

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Pipe Island Lighthouse
St. Mary's River
Chippewa Co: MI
Landholding Agency: GSA
Property Number: 54200310007
Status: Excess
Reason: Not accessible by road
GSA Number: 1–U–MI–413A

Mississippi

146 Units
Naval Air Station
Meridian Co: MS 39309–
Landholding Agency: Navy
Property Number: 77200310005
Status: Unutilized
Reason: Secured Area

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–

Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776–
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reason: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200220007
Status: Excess
Reason: Extensive deterioration

Bldg.
Old Mill Park Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200310007
Status: Excess
Reason: Extensive deterioration

Nebraska

Vault Toilets
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reason: Extensive deterioration

Patterson Treatment Plant
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reason: Extensive deterioration

#30004
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reason: Extensive deterioration

#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reason: Extensive deterioration

Nevada

Air Traffic Control Tower
Perimeter Road
Las Vegas Co: NV
Landholding Agency: DOT
Property Number: 87200310002
Status: Unutilized
Reason: Within airport runway clear zone

New Jersey

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310013
Status: Unutilized
Reason: Extensive deterioration

Bldg. D–5
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310015
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–14
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310016
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–31
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310017
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–36
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310018
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–179
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 531
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310020
Status: Unutilized
Reason: Extensive deterioration

Bldg. 569
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 570
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 589
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310023
Status: Unutilized
Reason: Extensive deterioration

New York

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Prop. ID WKS20350
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310008
Status: Unutilized
Reason: Extensive deterioration

Prop. ID WKS18652
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA

Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reason: Extensive deterioration

Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: OK
Property Number: 31200240009
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 94756–0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 94756–0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reason: Extensive deterioration

2 Comfort Stations
Landing PUA/Juniper Point
PUA
Stigler Co: McIntosh OK 94462–9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reason: Extensive deterioration

Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 94462–9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reason: Extensive deterioration

Comfort Station
Brooken Cove PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240017
Status: Excess
Reason: Extensive deterioration

South Carolina

Prop. ID JST18895
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310010
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Thurmond Project
Clarks Hill Co: McCormick SC
Location: JST15781, JST15784, JST15864, JST15866, TST15868
Landholding Agency: COE
Property Number: 31200310011
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST17133
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310012
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST18428
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310013
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter Co: SD 00000–
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: Water treatment plant

17 Bldgs.
Oak Ridge Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–801, A–D, H, K–891, K–892, K1025A–E, K–1064B–E, H, K, L, K1206–E
Landholding Agency: Energy
Property Number: 41200310007
Status Unutilized
Reasons: Secured Area; Extensive deterioration

Texas

Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reason: Extensive deterioration

Former Army Aircraft Plant
Industrial Road
Saginaw Co: Tarrant TX 76131–
Landholding Agency: GSA
Property Number: 54200310009
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration
GSA Number: 7–D–TX–0879

Virginia

4 Bldgs.
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Location: 01008, 01108, 01109, 01110
Landholding Agency: Army
Property Number: 21200310058
Status: Unutilized
Reason: Extensive deterioration

27 Bldgs.
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Location: S1259, 00872, 00894, 00924, 01003, 01006, 01008–01012, 01015–01016, 01023, 01052–01054, 01102, 01117–01119, 01204, 01249, 01270, A1007, A1101
Landholding Agency: Army
Property Number: 21200310059
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01105
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200310060
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11
Naval Air Station Oceana
Virginia Beach Co: VA 23451–
Landholding Agency: Navy
Property Number: 77200310006
Status: Excess
Reason: Extensive deterioration

Washington

Rec Storage Bldg.

Richland Parks
Richland Co: Benton WA 99352–
Landholding Agency: COE
Property Number: 31200240019
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Unutilized
Reason: Floodway

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 312199010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
US HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy. 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: VA
Property Number: 31199120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden
Co: Dunkin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707

Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin
Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway

Cheathman Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564—
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Underutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551—
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Underutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reason: Within airport runway clear zone Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Underutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Underutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562—
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214—
Location: Interstate 40 to S. Mount Juliet Road
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167—
Location: Florence Road near Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167—
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167—
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214—
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030—
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Underutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562—
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564—
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway

Tract 104 *et al.*
Cordell Hull Lake and Dam Project
Horseshoe Bend Launching Area
Carthage Co: Smith TN 37030—
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087—
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138—
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207—
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway

Washington

2.8 acres
Tract P–1003
Kennewick Co: Benton WA 99336—
Landholding Agency: COE
Property Number: 31200240020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505—
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126—
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601—
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: Inaccessible

[FR Doc. 03–2630 Filed 2–6–03; 8:45 am]
BILLING CODE 4210–29–M

Federal Register

Friday,

February 7, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 239, 249, 270, and 274

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies; Final Rule

17 CFR Part 275

Proxy Voting by Investment Advisers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, 270, and 274

[Release Nos. 33–8188, 34–47304, IC–25922; File No. S7–36–02]

RIN 3235–AI64

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments on Paperwork Reduction Act burden estimate.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to require registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities they hold. These amendments require registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. The amendments also require registered management investment companies to file with the Commission and to make available to shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

DATES: *Effective Date:* April 14, 2003.

Compliance Dates: See Section III of this release for information on compliance dates.

Comment Date: Comments regarding the ''collection of information'' requirements, within the meaning of the Paperwork Reduction Act of 1995, of Form N–PX should be received by March 14, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–36–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will also be posted on the Commission's Internet site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Attorney, Christopher P. Kaiser, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting new rule 30b1–4 [17 CFR 270.30b1–4] and new Form N–PX [17 CFR 274.130] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''); amendments to Forms N–1A [17 CFR 239.15A; 274.11A], N–2 [17 CFR 239.14; 274.11a–1], and N–3 [17 CFR 239.17a; 17 CFR 274.11b], the registration forms used by management investment companies to register under the Investment Company Act and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''); and amendments to Form N–CSR [17 CFR 249.331; 17 CFR 274.128],[2] the form to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[3]

Executive Summary

We are adopting rule and form amendments that:

- Require a management investment company registered under the Investment Company Act of 1940 (''fund'') to disclose in its registration statement (and, in the case of a closed-end fund, Form N–CSR) the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities; and
- Require a fund to file with the Commission and to make available to its shareholders, either on its Web site or upon request, its record of how it voted proxies relating to portfolio securities. A fund will be required to disclose in its annual and semi-annual reports to shareholders and in its registration statement the methods by which shareholders may obtain information about proxy voting.[4]

In a companion release, we are also adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that will require a registered investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, to disclose to clients how they may obtain information on how the adviser voted their proxies, and to maintain certain records relating to proxy voting.[5]

I. Introduction and Background

As of September 2002, mutual funds[6] held $2.0 trillion in publicly traded U.S. corporate equity, representing approximately 18% of all publicly traded U.S. corporate equity.[7] This represents a dramatic increase from only 7.4% at the end of 1992.[8] Millions of individual American investors, in turn, hold shares of equity mutual funds, relying on these funds—and the value of the corporate securities in which they invest—to fund their retirements, their childrens' educations, and their other basic financial needs.[9] Yet, despite the enormous influence of mutual funds in the capital markets and their huge

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

[2] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[3] Pub. L. 107–204, § 302, 116 Stat. 745 (2002).

[4] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)] (''Proposing Release'').

[5] *See* Investment Advisers Act Release No. 2106 (Jan. 31, 2003).

[6] For simplicity, this release focuses on mutual funds (*i.e.*, open-end management investment companies). An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. The amendments, however, would also apply to registered closed-end management investment companies and insurance company separate accounts organized as management investment companies that offer variable annuity contracts.

[7] *See* Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States: Flows and Outstandings, Third Quarter 2002, at 90 (2002) [hereinafter Flow of Funds Accounts] (estimating $2.005 trillion market value of mutual fund corporate equity holdings and $10.960 trillion market value of all corporate equity issues).

[8] Securities Industry Association, Securities Industry Fact Book 71 (2002).

[9] Investment Company Institute, Mutual Fund Fact Book 37 (42nd ed. 2002). Approximately 93 million individual investors hold shares of mutual funds. *Id.* Shares of equity mutual funds are held through 164.8 million shareholder accounts. *Id.* at 63. A single individual may hold mutual fund shares through multiple accounts.

impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities.[10] We believe that the time has come to increase the transparency of proxy voting by mutual funds. This increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value.

Mutual funds are formed as corporations or business trusts under state law and, as in the case of other corporations and trusts, must be operated for the benefit of their shareholders.[11] Because a mutual fund is the beneficial owner of its portfolio securities, the fund's board of directors, acting on the fund's behalf, has the right and the obligation to vote proxies relating to the fund's portfolio securities. As a practical matter, however, the board typically delegates this function to the fund's investment adviser as part of the adviser's general management of fund assets, subject to the board's continuing oversight. The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of ''utmost good faith, and full and fair disclosure.''[12] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[13]

Traditionally, mutual funds have been viewed as largely passive investors, reluctant to challenge corporate management on issues such as corporate governance.[14] Funds have often followed the so-called ''Wall Street rule,'' according to which an investor should either vote as management recommends or, if dissatisfied with management, sell the stock.[15] In recent years, however, some funds, along with other institutional investors, have become more assertive in exercising their proxy voting responsibilities.[16] The increased assertiveness by mutual funds in the voting of proxies may have a number of causes. In some instances, funds have come to hold such large positions in a particular portfolio company that they cannot easily sell the company's stock if the company's management is performing poorly.[17] The investment policies of index funds typically do not permit them to sell poorly performing investments, and thus these funds may become active in corporate governance in order to maximize value for their shareholders.[18]

Recent corporate scandals have created renewed investor interest in issues of corporate governance and have underscored the need for mutual funds and other institutional investors to focus on corporate governance.[19] The increased equity holdings and accompanying voting power of mutual funds place them in a position to have enormous influence on corporate accountability. As major shareholders, mutual funds may play a vital role in monitoring the stewardship of the companies in which they invest.

Moreover, in some situations the interests of a mutual fund's shareholders may conflict with those of its investment adviser with respect to proxy voting.[20] This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund.[21] In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests.

Yet, in spite of the substantial institutional voting power held by mutual funds, the increasing importance of the exercise of that power to fund shareholders, and the potential for conflicts of interest with respect to the exercise of fund proxy voting power, limited information is available regarding how funds vote their proxies. At present, the Commission's rules do not require mutual funds to disclose either their proxy voting policies and procedures or their proxy voting records.[22] Several mutual fund complexes voluntarily provide

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[10] *See* John Wasik, *Speak Loudly—Or Lose Your Big Stick,* The Financial Times, July 24, 2002, at 26 (only eight retail mutual fund groups openly disclose how they vote on proxies). We have previously prepared reports commenting on the role of institutional investors in the corporate accountability process and their impact on portfolio companies. *See* Division of Corporation Finance, SEC, Staff Report on Corporate Accountability (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess.) [hereinafter SEC, Staff Report on Corporate Accountability]; SEC, Institutional Investor Study Report (Mar. 10, 1971) (printed for the use of House Comm. on Interstate and Foreign Commerce, 92nd Cong., 1st Sess.) [hereinafter SEC, Institutional Investor Study Report].

[11] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations* § 2.4 *in* The Investment Company Regulation Deskbook (Amy L. Goodman ed., 1997).

[12] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[13] *See* Investment Advisers Act Release No. 2106, *supra* note 5. See also SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

[14] *See, e.g.*, SEC, Staff Report on Corporate Accountability, *supra* note 10, at 404 (investment managers have routinely supported management slates of director nominees); Alan R. Palmiter, *Mutual Fund Voting of Portfolio Shares: Why Not Disclose?*, 23 Cardozo L. Rev. 1419, 1430–31 (2002) (discussing mutual fund passivity in corporate governance). *See generally* John C. Coffee, Jr., *The SEC and The Institutional Investor: A Half-Time Report*, 15 Cardozo L. Rev. 837 (1994) (institutional investors have historically been passive investors); Bernard S. Black, *Shareholder Passivity Reexamined*, 89 Mich. L. Rev. 520 (1990) (shareholder voting has historically been passive).

[15] *See* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 392 (describing ''Wall Street Rule'').

[16] *See, e.g.*, Aaron Lucchetti, *A Mutual-Fund Giant Is Stalking Excessive Pay*, Wall Street Journal, June 12, 2002, at C1 (Fidelity has voted against management recommendations involving stock-option plans); Kathleen Day, *Prodding For Disclosure of Funds' Proxy Votes*, Washington Post, Apr. 8, 2001, at H1 (Domini Social Equity Fund voted against management proposal to issue additional stock options for directors).

[17] *See* Palmiter, *supra* note 14, at 1435–36 (as holdings have increased, mutual funds have realized that they cannot easily sell blocks of poorly performing stock).

[18] *See* Kathleen Pender, *The Influence of Indexing on the Markets*, San Francisco Chronicle, June 23, 2002, at G1 (some index funds are more likely to vote proxies because they generally cannot sell portfolio securities consistent with their investment policies).

[19] *See, e.g.*, Josh Friedman, *Vanguard to Turn More Activist in Proxy Voting*, Los Angeles Times, Aug. 22, 2002, at B3 (Vanguard imposing stricter corporate governance guidelines in light of recent events); Tom Hamburger, *Union Targets Corporate Change,* Wall Street Journal, July 30, 2002, at A2 (workers should use pension funds and votes to compel changes in corporate behavior); Beth Healy, *Big Investors Assuming a More Activist Stance*, Boston Globe, July 11, 2002, at C1 (big investors say they are taking a more activist stance after financial scandals at Enron, Global Crossing, and WorldCom); Russ Wiles, *Funds May Have More to Say on Governance*, Chicago Sun-Times, June 3, 2002, at F53 (investors taking a closer look at corporate governance issues as a result of Enron).

[20] *See, e.g.*, Aaron Bernstein & Geoffrey Smith, *Can You Trust Your Fund Company?*, BusinessWeek Online, Aug. 8, 2002 (AFL–CIO argues that conflicts of interest lead mutual funds to vote with management).

[21] For additional examples of potential conflicts of interest involving investment advisers, *See* Investment Advisers Act Release No. 2106, *supra* note 5, at Section I., ''Background.''

[22] In general, investment companies are organized either as business trusts in Delaware or Massachusetts, or as corporations in Maryland. The applicable state statutes do not specifically permit shareholders to inspect books and records relating to proxy voting by funds with respect to portfolio securities. *See* Del. Code Ann. tit. 12, § 3801–3824 (2001); Mass. Gen. Laws. Ann. ch. 182, § 1–14 (2002); Md. Code Ann., Corporations § 2–512 (2001).

information to investors, often on their Web sites, about the policies and procedures that they use to determine how to vote proxies and, in some cases, their actual proxy voting decisions.[23] The Internet provides a medium for these funds to make information about their proxy voting available to shareholders quickly and in a cost-effective manner. We applaud these voluntary efforts of mutual funds to disclose proxy voting information to shareholders.

We believe, however, that the time has now arrived for the Commission to require mutual funds to disclose their proxy voting policies and procedures, and their actual voting records. Investors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf. Last September, we proposed amendments that would require mutual funds and other registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities that they hold (''Proposing Release'').[24] Our proposals resulted in an extraordinary level of public interest and vigorous debate and over 8,000 comment letters.[25] Today we adopt these proposals, with modifications to address commenters' concerns.

Proxy voting decisions by funds can play an important role in maximizing the value of the funds' investments, thereby having an enormous impact on the financial livelihood of millions of Americans. Further, shedding light on mutual fund proxy voting could illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests. Finally, requiring greater transparency of proxy voting by funds may encourage funds to become more engaged in corporate governance of issuers held in their portfolios, which may benefit all investors and not just fund shareholders.

II. Discussion

The Proposing Release generated significant comment and public interest. Of the approximately 8,000 comment letters, the overwhelming majority supported the proposals and urged us to adopt the proposed amendments. Many commenters, including individual investors, fund groups that currently provide proxy voting information to their shareholders, labor unions, and pension and retirement plan trustees, supported the proposals, and in some cases commented that the proposals did not go far enough in requiring funds to provide proxy voting disclosure. Many fund industry members supported the proposed amendments regarding the disclosure of policies and procedures. However, most fund industry members opposed the proposed amendments that would require disclosure of a fund's complete proxy voting record and disclosure of votes that are inconsistent with fund policies and procedures.

The Commission is adopting the proposed amendments with the modifications described below that address some of the concerns expressed by commenters.

A. Disclosure of Policies and Procedures With Respect to Voting Proxies Relating to Portfolio Securities

The Commission is adopting, with one modification to address commenters' concerns, the requirement that mutual funds that invest in voting securities disclose in their statements of additional information (''SAIs'') the policies and procedures that they use to determine how to vote proxies relating to securities held in their portfolios.[26] We are also adopting the requirement that closed-end funds disclose their proxy voting policies and procedures annually on Form N–CSR.[27] This disclosure would include the procedures that a fund uses when a vote presents a conflict between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser, principal underwriter, or an affiliated person of the fund, its investment adviser, or principal underwriter, on the other.[28] It also includes any policies and procedures of a fund's investment adviser, or any other third party, that the fund uses, or that are used on the fund's behalf, to determine how to vote proxies relating to portfolio securities. For example, if a fund delegates proxy voting decisions to its investment adviser and the adviser uses its own policies and procedures to vote the fund's proxies, disclosure of the adviser's policies and procedures is required. Or a fund's board may wish to adopt its adviser's policies and procedures, rather than designing its own.

We also are adopting, as proposed, the requirement that a fund disclose in its shareholder reports that a description of the fund's proxy voting policies and procedures is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://*

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[23] *See* Calvert Group, Ltd. <*www.calvertgroup.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Domini Social Investments LLC <*www.domini.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Fidelity Management & Research Company <*www.fidelity.com*> (visited January 14, 2003) (proxy voting policies); PAX World Management Corporation <*www.paxfund.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Teachers Insurance and Annuity Association of America-College Retirement and Equities Fund <*www.tiaa-cref.org*> (visited January 14, 2003) (proxy voting policies); The Vanguard Group <*www.vanguard.com*> (visited January 14, 2003) (proxy voting policies).

[24] *See* Proposing Release, *supra* note 4. Prior to our rule proposal, we received three rulemaking petitions urging that we adopt rules requiring funds to disclose both the policies and guidelines followed by the funds in determining how to vote on proxy proposals and the record of actual proxy votes cast. *See* Rulemaking Petition by Domini Social Investments, LLC (Nov. 27, 2001); Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petitions by the American Federation of Labor and Congress of Industrial Organizations (July 30, 2002 and Dec. 20, 2000). The rulemaking petitions are available for inspection and copying in File No. 4–439 in the Commission's Public Reference Room.

[25] *See, e.g.*, John J. Brennan and Edward C. Johnson 3d, *No Disclosure: The Feeling is Mutual*, Wall Street Journal, Jan. 14, 2003, at A14 (arguing that proxy voting disclosure would harm shareholders); Aaron Lucchetti, *SEC Proposal on Proxy Votes Finds Supporters in the House*, Wall Street Journal, Dec. 17, 2002, at C14 (reporting that House Financial Services Committee Chairman Michael G. Oxley and Capital Markets Subcommittee Chairman Richard H. Baker support the proxy voting disclosure proposal); John C. Bogle, *Mutual Fund Secrecy*, New York Times, Dec. 14, 2002, at A35 (arguing that fund agents should disclose proxy voting information); Gretchen Morgenson, *Wider Support Is Sought For Disclosing Mutual Fund Votes*, New York Times, Oct. 23, 2002, at C11 (explaining joint efforts of Pax World Funds, AFL–CIO, and Fund Democracy to urge investors to support the proposal, and discussing comments by industry participants); Kathleen Day, *SEC Wants Funds To Disclose Votes*, Washington Post, Sept. 20, 2002, at E3 (reporting comments on the proposal by disclosure advocates and opponents).

The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–36–02). Public comments submitted by electronic mail are also available on our Web site, *www.sec.gov*. Many of the comment letters that the Commission received commented on both the Proposing Release and a companion release proposing a new rule and rule amendments under the Investment Advisers Act of 1940 that we are also adopting today. *See* Investment Advisers Act Release No. 2106, *supra* note 5.

[26] Item 13(f) of Form N–1A; Item 18.16 of Form N–2; Item 20(o) of Form N–3. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').

[27] Item 7 of Form N–CSR.

[28] *See* Investment Advisers Act Release No. 2106, *supra* note, at Section II.A.2.b. ''Resolving Conflicts of Interest'' (discussing need for investment adviser's policies and procedures to address how adviser resolves material conflicts of interest with its clients).

www.sec.gov.[29] A fund will be required to send this description of the fund's proxy voting policies and procedures within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[30]

Commenters generally supported the proposed disclosure requirements regarding proxy voting policies and procedures. A number of commenters, however, objected to certain aspects of the disclosure requirements. Some commenters recommended that we provide additional, more specific guidelines regarding the categories of disclosure that should be included in proxy voting policies and procedures. These commenters, which included many ''socially responsible'' fund groups,[31] argued that the absence of specific guidelines could create an incentive for funds to adopt as few policies and procedures as possible, thereby minimizing reporting and disclosure obligations.

We have determined not to prescribe more specific guidelines or requirements for the proxy voting policies and procedures that a fund must disclose in its SAI or Form N–CSR for closed-end funds. The intent of our proposal is to promote transparency with respect to proxy voting information, and not to mandate the content of a fund's policies or procedures. Therefore, we believe that funds should be allowed the flexibility to determine the content that would be appropriate for this disclosure.

We do expect, however, that funds' disclosure of their policies and procedures will include general policies and procedures, as well as policies with respect to voting on specific types of issues. The following are examples of general policies and procedures that some funds include in their proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- The extent to which the fund delegates its proxy voting decisions to its investment adviser or another third party, or relies on the recommendations of a third party;
- Policies and procedures relating to matters that may affect substantially the rights or privileges of the holders of securities to be voted; and
- Policies regarding the extent to which the fund will support or give weight to the views of management of a portfolio company.

The following are examples of specific types of issues that are covered by some funds' proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- Corporate governance matters, including changes in the state of incorporation, mergers and other corporate restructurings, and anti-takeover provisions such as staggered boards, poison pills, and supermajority provisions;
- Changes to capital structure, including increases and decreases of capital and preferred stock issuance;
- Stock option plans and other management compensation issues; and
- Social and corporate responsibility issues.

We are modifying our proposal in one respect, however, to clarify that a fund may satisfy the requirements for a description of its policies and procedures by including a copy of the policies and procedures themselves.[32] A number of commenters recommended that we streamline the disclosure of policies and procedures that would be required in the SAI. Several of these commenters were fund groups that noted that they have funds with multiple sub-advisers, each of which uses its own proxy voting policies and procedures to vote the fund's proxies. Because the proposed rules would require the fund to include a description of each such sub-adviser's policies and procedures in the fund's SAI, commenters argued, the requirements would add lengthy disclosure to the SAI. Further, because different sub-advisers for a single fund could have policies that vary with respect to a particular issue, this disclosure could confuse investors. These commenters argued that disclosure of policies and procedures was not necessary or appropriate given the lack of genuine shareholder interest in the information.

We have determined that it would not be appropriate to modify the proposal to allow a fund to reduce or eliminate the disclosure regarding its proxy voting policies and procedures. Shareholders have a right to know the policies and procedures that are being used by a fund to vote proxies on their behalf. To the extent that multiple policies are being used by a single fund, shareholders should have access to information about all the policies that are in effect. In order to mitigate the burden of preparing descriptions of policies and procedures, however, we have modified our disclosure requirements to permit a fund to include the actual policies and procedures used to vote proxies in the SAI or N–CSR, rather than a description of the policies.

Some commenters argued that the SAI was not the appropriate location for disclosure of proxy voting policies and procedures because the SAI is not likely to reach a wide base of investors. These commenters argued that the policies and procedures should be required to be distributed to all investors, as part of the fund's prospectus, annual report, or in a separate mailing. We continue to believe, however, that the SAI is the most appropriate and cost-effective location for this disclosure. The disclosure will be readily accessible to shareholders because funds are required to provide an SAI promptly to any investor who requests one.[33] On the other hand, funds and their shareholders will not be forced to bear the costs for printing and mailing this information to every shareholder, without regard to their level of interest in this information.

B. Disclosure of Proxy Voting Record

The Commission is adopting, with modifications, amendments that will require each fund to file with the Commission its proxy voting record and make this record available to its shareholders. The Commission is not, however, adopting its proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures.

The proposal to require funds to disclose their proxy voting records generated strong and divergent views among commenters. A number of commenters, including an overwhelming number of individual investors, strongly supported the Commission's proposal to require a fund to disclose its complete proxy voting record. Many of these commenters stated that this disclosure would improve shareholders' ability to monitor funds' voting decisions on their behalf and that it would allow investors to make more informed decisions when choosing among funds.

[29] *See* Item 22(b)(7) and 22(c)(5) of Form N–1A; Instructions 4.g. & 5.e. to Item 23 of Form N–2; Instructions 4(vii) & 5(v) to Item 27(a) of Form N–3.

[30] Instructions to Items 22(b)(7) and 22(c)(5) of Form N–1A; Instruction 6.a. to Item 23 of Form N–2; Instruction 6(i) to Item 27(a) of Form N–3.

[31] ''Socially responsible'' funds use social and moral criteria as well as traditional investment criteria to select investments.

[32] Instruction 1 to Item 13(f) of Form N–1A; Instruction 1 to Item 18.16 of Form N–2; Instruction 1 to Item 20(o) of Form N–3; Instruction to Item 7 of Form N–CSR.

[33] Instruction 3 to Item 1(b)(1) of Form N–1A (requiring fund or financial intermediary through which shares of the fund may be purchased or sold to send the SAI, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery).

On the other hand, many commenters, including a large number of fund industry participants, strongly opposed any requirement for a fund to provide disclosure of its actual proxy votes cast. First, they argued that shareholders are not interested in this disclosure, with many fund groups claiming that they have received virtually no requests from their shareholders for proxy voting information. Second, they argued that the proposals would deny funds the ability to vote confidentially and subject funds to pressure from corporate management to influence proxy voting decisions, as well as to retaliatory actions by management, such as restricting access by portfolio managers to corporate personnel. Third, on a related point, commenters argued that mandatory disclosure of proxy votes would undermine their ability to change corporate governance practices of portfolio companies through ''behind the scenes'' private communications. Fourth, they argued that requiring funds to disclose their proxy votes publicly will subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which will detract from a fund's ability to concentrate on the management of its portfolio. Fifth, fund industry commenters argued that the required disclosure of proxy votes would undermine the role of fund boards of directors, including independent directors, in overseeing proxy voting and protecting fund shareholders against conflicts of interest. Some of these commenters suggested that rather than requiring disclosure of proxy votes, the Commission should mandate that fund directors approve proxy voting policies and procedures, including policies and procedures for addressing potential conflicts of interest, and should require reports to be provided to fund directors concerning actual proxy votes cast. Sixth, the commenters argued that the costs of collecting and disclosing the information in semi-annual reports on Form N–CSR would be substantial and would exceed any benefit to shareholders from the disclosure.

After careful consideration of these comments, we continue to believe that requiring funds to disclose their complete proxy voting records will benefit investors by improving transparency and enabling fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies. With respect to the specific arguments raised by commenters who opposed disclosure of proxy votes, we note first that the argument that investors are not interested in proxy voting disclosure is to some extent belied by the large number of favorable comments from individual investors that the proposal attracted. In addition, we note that a recent shareholder proposal seeking to require a major fund to disclose its proxy votes on social and environmental issues generated significant support from fund shareholders.[34] Further, regardless of whether all, or a majority of, investors are interested in proxy vote disclosure, we believe that fund shareholders who are interested in this information have a fundamental right to know how the fund has exercised its proxy votes on their behalf.

Second, while we are cognizant of concerns that disclosure will undermine funds' ability to vote confidentially and thereby lead to pressure on or retaliation against funds, we believe that this risk is not sufficient to outweigh shareholders' interests in knowing how their funds have voted their portfolio securities. In addition, as some proponents of the disclosure requirements argued, the principle of confidential voting is intended to protect shareholders from having their votes disclosed *prior* to a shareholder meeting, while the amendments that we are adopting would only require disclosure of votes two months or more *after* a shareholder meeting. We are also persuaded by other commenters who noted that a large majority of portfolio companies currently do not have confidential voting policies and that companies are often able to identify when and how a particularly large shareholder, such as a fund, has cast its votes.[35]

Third, with respect to the argument that the disclosure of a fund's proxy voting record will undermine the use of ''behind the scenes'' communications to change corporate governance practices, we note that disclosure by funds of their proxy votes is not inconsistent with these communications and will not force funds to disclose these communications. Further, we believe that requiring a fund to disclose its proxy voting record may actually encourage it to become more engaged in corporate governance matters involving issuers held in its portfolio, through ''behind the scenes'' communications as well as other means.

Fourth, with respect to the argument that proxy vote disclosure will ''politicize'' the process of proxy voting by funds to the detriment of fund shareholders, we believe that to the extent that greater disclosure may encourage and enable shareholders to express their views on their funds' proxy decisions, that is an appropriate development. We agree, however, that fund shareholders could be adversely affected if, in fact, disclosure of fund proxy votes results in significant politicization of the proxy voting process by non-shareholder interest groups and interference with funds' ability to change corporate governance practices through ''behind the scenes'' communications. Therefore, the Commission has asked the staff to monitor the effects of the disclosure and report back to the Commission on the operation of the rules, and whether there have been any unintended consequences as a result of the disclosure, no later than December 31, 2005.

Fifth, we disagree with the argument that proxy voting disclosure will undermine the authority of funds' boards of directors, and that we instead should adopt amendments to require that boards be more involved in the proxy voting process. Disclosure of proxy votes is not inconsistent with, and, in fact, will promote recognition by fund boards of their obligation to exercise their proxy voting responsibilities in a manner that is consistent with shareholders' interests. Further, we believe that the additional requirements with respect to fund boards that some commenters suggested that we adopt in lieu of proxy voting disclosure are unnecessary. A fund's board of directors, acting on the fund's behalf, already has the obligation to vote proxies relating to the fund's portfolio securities. Although the board typically delegates this function to the fund's investment adviser, the adviser remains subject to the board's continuing oversight. By increasing transparency of proxy voting, the amendments will work in tandem with the existing obligation of fund boards.

Finally, with respect to arguments that the disclosure may impose excessive costs, we note that several fund groups that currently provide disclosure of their complete proxy

[34] *See CREF Participants Reject All Four Resolutions at 2002 Annual Meeting,* TIAA–CREF Press Release, Nov. 7, 2002 <*www.tiaa-cref.org*> (visited Jan. 14, 2002) (18.7% of shares voted in favor of shareholder proposal that College Retirement Equities Fund (CREF) disclose how it votes proxies that involve social and environmental issues).

[35] *See* Timothy M. Hunt, *IRRC Corporate Governance Service 2002 Background Report F,* Background Reports (IRRC) at 7, 10 (Jan. 2002) (noting that 26.9% of the S&P 500 companies have confidential voting procedures, with smaller percentages at smaller companies, and that use of street names often does not protect the identity of shareholders).

voting records to their shareholders commented that although there are start-up costs for compliance systems, this cost decreases over time, and that the overall costs of the disclosure are minimal. We find these arguments made by funds that are providing this disclosure to be particularly persuasive and continue to believe that the costs of disclosure are reasonable. We also note that by requiring disclosure of the proxy voting record in filings with the Commission, with additional disclosure in the fund's SAI and annual and semi-annual reports to shareholders about how investors may obtain this voting record, we have tailored the disclosure requirement to allow those investors who are interested in this disclosure to access the information without imposing undue cost burdens. In addition, as discussed below, we have modified our proposals in order to further reduce the costs associated with this disclosure.[36]

Disclosure of Complete Proxy Voting Record

The Commission is adopting new rule 30b1–4 under the Investment Company Act to require that a fund file its complete proxy voting record on an annual basis.[37] This rule will require a fund to file new Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Form N–PX will be a reporting form required under the Investment Company Act, and will be required to be signed by the fund, and on behalf of the fund by its principal executive officer or officers.[38]

We had proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR, which will be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[39] One commenter argued that this means of disclosure would impose unnecessary costs and substantial administrative complexity.[40] The commenter noted that, under our proposed rules, fund complexes that have funds with staggered fiscal year ends would be required to file reports on Form N–CSR containing their proxy voting records as many as twelve times per year. We are persuaded that annual disclosure of a fund's proxy voting record is sufficient and that the filing does not need to be based on a fund's fiscal year end. Therefore, to reduce the burden of proxy vote disclosure, we are modifying our proposal to require that all funds file their voting records annually not later than August 31, for the twelve-month period ended June 30. This approach will have the advantages of making each fund's proxy voting record available within a relatively short period of time after the proxy voting season,[41] and of providing disclosure of all funds' proxy voting records over a uniform period of time.

Funds will be required to disclose the following information on Form N–PX for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the fund was entitled to vote:

- The name of the issuer of the portfolio security;
- The exchange ticker symbol of the portfolio security;
- The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;
- The shareholder meeting date;
- A brief identification of the matter voted on;
- Whether the matter was proposed by the issuer or by a security holder;
- Whether the fund cast its vote on the matter;
- How the fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and
- Whether the fund cast its vote for or against management.[42]

In response to commenters who noted that the exchange ticker symbol and CUSIP number may be difficult to obtain for certain portfolio securities, particularly foreign securities, we have added an instruction permitting a fund to omit this information if it is not available through reasonably practicable means.[43]

A fund also will be required to make its proxy voting record available to shareholders. However, we are modifying our proposal, in response to a comment, to allow a fund the flexibility to choose to make its proxy voting record available to shareholders either upon request or by making available an electronic version on or through the fund's Web site.[44] The proposed amendments would have required a fund to send the proxy voting record upon request.[45] This modification addresses concerns that the proposals would require funds with large numbers of holdings to produce lengthy proxy voting spreadsheets and to send them to investors who request them.[46]

As adopted, our amendments will require a fund to include in its annual and semi-annual reports to shareholders as well as its SAI a statement that information regarding how the fund voted proxies relating to portfolio securities during the most recent twelve-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (2) on the Commission's Web site.[47] If a fund discloses that its proxy voting record is available by calling a toll-free (or collect) telephone number, it must send the information disclosed in the fund's most recently filed report on Form N–PX within three business days of receipt of a request for this information, by first-class mail or other

[36] *See* discussion *infra,* ''Disclosure of Complete Proxy Voting Record.''

[37] 17 CFR 270.30b1–4; General Instruction A and Item 1 to Form N–PX [17 CFR 274.129].

[38] General Instruction F.2.(a) to Form N–PX.

[39] Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[40] Memorandum from Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission re: Comments of Investment Company Institute (Jan. 15, 2003) (''ICI Memorandum'') (available in the comment file for File Nos. S7–36–02 and S7–38–02 and on the Commission's Web site, *www.sec.gov*).

[41] Based on information provided to the Commission staff by a third party that provides proxy voting services, the staff estimates that over 54% of shareholder meetings are held in the period from April through June of each year.

[42] Item 1 of Form N–PX.

[43] Instruction 2 to Item 1 of Form N–PX. *See* ICI Memorandum, *supra* note ; Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company (Dec. 6, 2002).

[44] In addition, the fund's proxy voting record will be publicly available on the EDGAR section of the Commission's Web site.

[45] Proposed Instructions to Items 13(f), 22(b)(7), and 22(c)(5) of Form N–1A; Proposed Instruction to Item 18.16 and proposed Instruction 6 to Item 23 of Form N–2; Proposed Instruction to Item 20(o) and proposed Instruction 6 to Item 27(a) of Form N–3.

[46] Letter of Matthew P. Fink, President, Investment Company Institute (Jan. 21, 2003).

[47] Items 13(f), 22(b)(8), and 22(c)(6) of Form N–1A; Item 18.16 and Instructions 4.h and 5.f to Item 23 of Form N–2; Item 20(o) and Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3.

If a fund is complying with this disclosure requirement, the inclusion of the fund's Web site address will not, by itself, include or incorporate by reference the information on the site into the fund's reports to shareholders or SAI, unless the fund otherwise acts to incorporate the information by reference. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58494 (Sept. 16, 2002)] (noting that if a company is complying with the requirement to disclose its Web site address in its annual report on Form 10–K, inclusion of its Web site address would not, by itself, include or incorporate by reference the information on the Web site into the filing).

means designed to ensure equally prompt delivery.[48]

If a fund discloses that its proxy voting record is available on or through its Web site, it must make available free of charge the information disclosed in the fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission.[49] We interpret the ''as soon as reasonably practicable'' standard to mean that the information would be available, barring unforeseen circumstances, on the same day as filing. We could revisit this requirement if posting on the same day does not generally occur.[50] A fund would not be required to continue to make available on or through its Web site any information from reports on Form N–PX that precede the most recently filed report on Form N–PX.

These rules require that a fund's proxy voting record be publicly available through filings with us. They also require that this information be readily available to fund shareholders from the fund itself and that shareholders be apprised of how this information may be obtained. We believe that these rules strike an appropriate balance—ensuring that a fund's proxy voting record is readily available to interested fund shareholders, while allowing funds the flexibility to choose how to make this information available in the most effective and cost-efficient manner.

Some commenters recommended other specific modifications to our proposed disclosure requirements, which we are not adopting. Several of these commenters suggested that we require funds to provide additional disclosure with respect to situations where the fund's investment adviser has a conflict of interest, including, for example, disclosure of any business and financial relationship with the issuer and all fees received by the adviser or its affiliates from the issuer during a designated period of time.

We have determined not to require additional disclosure regarding conflict of interest situations at the present time. We believe that disclosure of a fund's complete voting record will enable shareholders to monitor how the fund voted in specific instances and whether the vote is in the shareholders' best interests. Further, requiring additional public disclosure with respect to conflicts of interest would significantly increase the complexity and cost of the proxy vote disclosure.

Several commenters argued that we should require a fund to provide its proxy vote disclosure in a uniform, web-accessible, downloadable format. Other commenters indicated that we should require a fund to disclose its proxy voting record on its Web site, if it has one. Commenters also suggested that we require funds to provide an executive summary of their votes, that might include, for example, the percentage of votes cast for and against management, sorted by the type of issue.

We have determined not to modify our proposals in order to add these requirements, in order to minimize the cost to funds and their shareholders of providing disclosure of fund proxy voting records. As adopted, our requirements will allow funds the flexibility to determine the best manner in which to make their proxy voting records available to shareholders. We continue to believe that our disclosure requirements strike an appropriate balance by ensuring that a fund's proxy voting record, as well as its policies and procedures, is readily available to interested fund shareholders without imposing undue costs. We would, however, encourage funds to use their Web sites and other available means to make their proxy voting records readily accessible to shareholders in a user-friendly format.

Other commenters, by contrast, requested that we limit the proposed disclosure regarding a fund's proxy voting record. For example, some commenters recommended that we require a fund to disclose information regarding only those proxy votes cast against management of the portfolio companies in which it invests, or where a conflict of interest exists.[51] In addition, one commenter suggested that we require only a summary of all proxy votes in the aggregate arranged according to issue.[52] We believe, however, that limiting disclosure of the proxy voting record to specific votes, or to a general summary of all votes, would significantly undercut the intent of our proposals, which is to enable fund shareholders to determine how a fund voted with respect to any particular proxy vote.

Disclosure of Proxy Votes That Are Inconsistent With Fund's Policies and Procedures

The Commission has determined not to adopt the proposed requirement that a fund disclose in its annual and semi-annual reports to shareholders proxy votes (or failures to vote) that are inconsistent with the fund's proxy voting policies and procedures.[53] Many commenters, including both those who generally supported the disclosure of funds' proxy voting records and those who generally opposed this disclosure, expressed concerns regarding the proposed requirements for disclosure of inconsistent votes. Proponents of proxy voting record disclosure argued that a requirement to disclose inconsistent votes might lead funds to draft overly broad policies and procedures to avoid triggering the required disclosure. Opponents of proxy voting record disclosure argued that the disclosure of inconsistent votes would be burdensome because it would require funds to analyze a large volume of proxy votes to determine whether any vote triggered the disclosure and then to provide a lengthy explanation to shareholders regarding each inconsistent vote, which would be expensive to prepare and not meaningful to investors. We find these arguments persuasive and have therefore determined not to adopt the requirement that funds disclose information regarding votes that are inconsistent with the fund's policies and procedures.

III. Effective Date and Compliance Date

The effective date of these amendments is April 14, 2003.

[48] Instruction 2 to Item 13(f), Instruction 1 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 2 to Item 18.16 and Instruction 6.b. to Item 23 of Form N–2; Instruction 2 to Item 20(o) and Instruction 6(ii) to Item 27(a) of Form N–3.

[49] Instruction 3 to Item 13(f), Instruction 2 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 3 to Item 18.16 and Instruction 6.c. to Item 23 of Form N–2; Instruction 3 to Item 20(o) and Instruction 6(iii) to Item 27(a) of Form N–3.

A fund could satisfy this requirement through hyperlinking to a third-party service or our EDGAR Web site. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)]. We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking.

[50] *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (construing the ''as soon as reasonably practicable'' standard to mean the same day as filing, barring unforeseen circumstances, with respect to the requirement that issuers disclose whether they make reports on Forms 10–K, 10–Q, and 8–K available on their Web sites as soon as reasonably practicable after filing of these reports with the Commission).

[51] *See* Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Teachers Insurance and Annuity Association of America/College Retirement and Equities Fund (Dec. 6, 2002) (recommending proxy vote disclosure in instances of potential conflict of interest); Letter of Leslie L. Ogg, President, Board Services Corporation (Nov. 22, 2002) (recommending disclosure when a fund votes against the recommendation of management and where a conflict of interest exists).

[52] Letter of Peter C. Clapman, Teachers Insurance and Annuity Association of America/College Retirement Equities Fund (Dec. 6, 2002).

[53] Proposed Items 22(b)(8) & (c)(6) of Form N–1A; Proposed Instructions 4.h. & 5.f. to Item 23 of Form N–2; Proposed Instructions 4(viii) & 5(vi) to Item 27(a) of Form N–3.

Registered management investment companies must file their first report on Form N–PX not later than August 31, 2004, for the twelve-month period beginning July 1, 2003, and ending June 30, 2004. Based on the comments, we believe that this will provide funds with sufficient time to make any necessary changes to existing software and internal systems in order to compile proxy voting information in the manner that will be required by new Form N–PX.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after July 1, 2003, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the fund's proxy voting policies and procedures.[54] Every annual report by a closed-end fund on Form N–CSR filed on or after July 1, 2003, must include the disclosure required by Item 7 of Form N–CSR regarding the fund's proxy voting policies and procedures.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after August 31, 2004, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the availability of the fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after August 31, 2004, must include the disclosure required by Item 22(b)(8) and 22(c)(6) of Form N–1A, Instructions 4.h. and 5.f. to Item 23 of Form N–2, or Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3, as applicable, regarding the availability of a fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after the effective date of an initial registration statement or post-effective amendment that is required to include a description of the fund's proxy voting policies and procedures (or, in the case of a closed-end fund, the filing date of its first annual report on Form N–CSR filed on or after July 1, 2003) must include the disclosure required by Item 22(b)(7) and 22(c)(5) of Form N–1A, Instructions 4.g. and 5.e. to Item 23 of Form N–2, or Instructions 4(vii) and 5(v) to Item 27(a) of Form N–3 regarding the availability of the fund's proxy voting policies and procedures.

[54] We would not object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b) under the Securities Act [17 CFR 230.485(b)], provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.

IV. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information that we have submitted are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (2) ''Form N–2—Registration Statement of Closed-End Management Investment Companies''; (3) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; (4) ''Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies''; and (5) ''Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies.'' OMB approved the collections of information for the amendments to Forms N–1A, N–2, and N–3, and rule 30e–1. Because we have modified our proposals as described above, we are revising the burden estimate for Form N–CSR and rule 30e–1. We have submitted a revised collection of information for Form N–CSR to OMB, and have submitted the following additional collection of information to OMB: ''Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Companies.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and Section 5 of the Securities Act [15 U.S.C. 77e]. Form N–CSR (OMB Control No. 3235–0570) was adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29] and Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78m and 78o(d)]. Form N–PX is being adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29]. Rule 30e–1 under the Investment Company Act (OMB Control No. 3235–0025) was adopted pursuant to Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)].

As discussed above, the amendments will require that funds holding equity securities disclose the policies and procedures that they use to determine how to vote the proxies of their portfolio securities. The amendments also require funds to file with the Commission and to make available to their shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities. These changes are intended to enhance the transparency of fund proxy voting and will allow shareholders to monitor whether funds are voting portfolio securities in the best interests of shareholders.

Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release, and we received numerous comment letters concerning the proposed collection of information requirements, particularly with respect to the proposed requirement to disclose funds' actual proxy voting records. Many commenters, including in particular funds that currently provide disclosure of their proxy votes, indicated that the Commission's estimates of the burden of the proposed disclosure were reasonable, and that available technology and other resources would render record-keeping and reporting requirements relatively routine. Other commenters, including many other members of the fund industry, argued that the Commission's estimates substantially underestimated the burden of providing the proposed disclosure. Some of these commenters argued that the Commission's estimates omitted start-up and one-time transition costs for collecting proxy voting information and preparing it in the format that would be required by Form N–CSR.[55]

Several commenters provided specific estimates of the costs of providing the disclosure of their proxy vote records. However, these commenters generally did not provide any breakdown of the components of these estimates (*e.g.*, number of tasks required, persons

[55] *See, e.g.*, Letter of Craig Tyle, General Counsel, Investment Company Institute (Dec. 6, 2002) (''ICI Letter'').

required to perform each task, wage rates for each person). One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR for one of its funds which cast proxy votes on 1,607 agenda items at 500 shareholder meetings during a six-month period.[56] The fund group estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours. Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[57] These estimates are generally consistent with the estimate in the Proposing Release that the disclosure on Form N–CSR of a fund's proxy voting record would take 10 hours per semi-annual filing on Form N–CSR, at an annual cost of $1,379 per fund. By contrast, a fund industry trade group estimated, based on a survey of fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[58]

We note that we have modified our proposal in two significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on new Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Because of these modifications, we have revised our burden estimates for Form N–CSR and rule 30e–1. The burden estimate for disclosure of a fund's proxy voting record will be the burden estimated for new Form N–PX. These revisions to the burden estimates are described below.

Form N–1A

Form N–1A, including the amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–1A was 801 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 99 hours per portfolio. The Commission estimates that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 portfolios file post-effective amendments on Form N–1A. Thus, the total hour burden for the preparation and filing of Form N–1A, prior to the proposed amendments, was 899,568 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per portfolio per filing of an initial registration statement by 8 hours, to 809 hours per portfolio, and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, to 101 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A is 916,162 hours.

Form N–2

Form N–2, including the amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–2 was 536.7 burden hours per filing, and the estimated annual hour burden for preparing post-effective amendments on Form N–2 was 101.7 hours per filing. The Commission estimates that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 respondents file post-effective amendments on Form N–2. Thus, the total annual hour burden for the preparation and filing of Form N–2, prior to the proposed amendments, was 79,003 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per filing of an initial registration statement on Form N–2 by 8 hours, to 544.7 hours per filing, and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–2 by 2 hours, to 103.7 hours per filing. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 is 80,198 hours.

Form N–3

Form N–3, including the amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–3 was 907.2 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 148.4 hours per portfolio. The Commission estimates that, on an annual basis, no initial registration statements will be filed on Form N–3 and 60 post-effective amendments will be filed on Form N–3. The estimated average number of portfolios per filing is 4, bringing the estimated total number of portfolios in post-effective amendments to filings on Form N–3 annually to 240. Thus, the total hour burden for the preparation and filing of Form N–3, prior to the proposed amendments, was 35,616 hours.

We estimated in the Proposing Release that the amendments to Form N–3 would increase the hour burden per portfolio of an initial registration statement by 8 hours, to 915.2 hours per portfolio, and would increase the hour burden per portfolio of a post-effective amendment to a registration statement by 2 hours, to 150.4 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 will be 36,096 hours.

Form N–CSR

Form N–CSR, including the amendments, contains collection of information requirements. The

[56] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co. (Dec. 6, 2002).

[57] Letter of Timothy Smith, Senior Vice-President, Walden Asset Management (Nov. 20, 2002).

[58] ICI Letter, *supra* note 55, at 14–15.

respondents to this information collection will be closed-end management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–CSR is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total hour burden for preparation of Form N–CSR is 35,139 hours.[59] In the Proposing Release, we estimated that 3,700 registered investment companies would file Form N–CSR on a semi-annual basis for a total of 7,400 filings.[60] We estimated in the Proposing Release that the amendments to Form N–CSR would increase the hour burden per filing of each semi-annual report on Form N–CSR by 10 hours, or 74,000 hours total. However, we have modified our proposal to require funds to disclose their proxy voting record in reports on new Form N–PX on an annual basis, rather than in reports on Form N–CSR on a semi-annual basis. As proposed, however, we are requiring registered closed-end management investment companies to include in their annual reports on Form N–CSR a description of the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. We estimate that 663 closed-end management investment companies will file reports on Form N–CSR, and are revising our estimate of the increase in the hour burden resulting from the amendments to 2 hours per filing. We estimate that the total annual burden attributable to the disclosure of proxy voting policies and procedures for closed-end funds will be 1,326 hours. Thus, the new total annual hour burden for preparation and filing of Form N–CSR will be 36,465 hours.[61]

Shareholder Reports

Rule 30e–1, including the amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[62] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not confidential.

There are approximately 3,700 funds subject to rule 30e–1. We estimated in the Proposing Release that the hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1, prior to the proposed amendments, was 202.5 hours per year, and that the amendments would increase the hour burden of complying with rule 30e–1 by 10 hours per fund per year for a total increase in burden hours of 37,000 hours. However, we have revised our proposed amendments to eliminate the proposed requirement that annual and semi-annual shareholder reports include disclosure of proxy votes that are inconsistent with the fund's proxy voting policies. Thus, we are revising our estimate of the increase in the hour burden of complying with rule 30e–1 attributable to the proposed amendments to 3,700 hours, rather than 37,000 hours, to reflect the elimination of this proposed disclosure requirement. The total hour burden of complying with rule 30e–1 will be 203.5 hours per year, for a total annual burden to the industry of 752,950 hours.[63]

Rule 30b1–4

The purpose of rule 30b1–4 is to improve the transparency of information about funds' proxy voting records. Rule 30b1–4 will require a fund to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. The respondents to rule 30b1–4 will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5.

We estimate that there are approximately 3,700 funds that will be affected by the rule. Each of these 3,700 funds will be required by rule 30b1–4 to file complete proxy voting records with the Commission on Form N–PX. For purposes of this PRA analysis, the burden associated with the requirement of Rule 30b1–4 has been included in the collection of information required by Form N–PX, rather than the rule. Compliance with rule 30b1–4 is mandatory for every registered management investment company, other than a small business investment company registered with the Commission on Form N–5. Responses to the disclosure requirements are not confidential.

Form N–PX

Form N–PX contains collection of information requirements. The respondents to this information collection will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5. Compliance with the disclosure requirements of Form N–PX is mandatory. Responses to the disclosure requirements are not confidential.

Every registered management investment company, other than a small business investment company registered with the Commission on Form N–5, will be required to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. We estimate that there are approximately 3,700 funds registered with the Commission, with 5,200 fund portfolios that hold equity securities that will be required to file Form N–PX.[64] We further estimate that for each of these funds the disclosure of its proxy voting record in filings on Form N–PX as of the end of each twelve-month period ended June 30 will require, on average, 14.4 hours per filing per equity portfolio, for a total annual

[59] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (release adopting Form N–CSR).

[60] Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)].

[61] The Commission has submitted additional collections of information to OMB for Form N–CSR in connection with Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)] (code of ethics and financial expert disclosure); Investment Company Act Release No. 25838 (Dec. 2, 2002) [67 FR 76780 (Dec. 13, 2002)] (auditor independence provisions of the Sarbanes-Oxley Act); Investment Company Act Release No. 25845 (Dec. 10, 2002) [67 FR 77593 (Dec. 18, 2002)] (revisions to rule 10b–18 under the Exchange Act); Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (shareholder reports and quarterly portfolio disclosure); and Investment Company Act Release No. 25885 (Jan. 8, 2003) [68 FR 2637 (Jan. 17, 2003)] (standards relating to listed company audit committees). These submissions are currently pending before OMB. If these submissions are approved, the approved total burden hours for Form N–CSR will be 195,472 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Form N–CSR, the approved total burden hours for Form N–CSR would be 122,798 hours (195,472—(74,000—1,326)).

[62] Rule 30e–1(a) under the Investment Company Act of 1940 [17 CFR 270.30e–1(a)] requires funds to include in their shareholder reports the information that is required by the fund's registration statement form.

[63] We have submitted an additional collection of information to OMB in connection with Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (proposing amendments regarding shareholder reports and quarterly portfolio disclosure). This submission is currently pending before OMB. If the submission is approved, the approved total burden hours for complying with rule 30e–1 will be 926,350 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Forms N–1A, N–2, and N–3, the approved total burden hours for complying with rule 30e–1 would be 893,050 hours (926,350 − (37,000 − 3,700)).

[64] The estimate of 3,700 funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 ''hybrid'' or bond portfolios that may hold some equity securities, for a total of 5,200 portfolios holding equity securities.

burden of 74,880 hours (14.4 hours per filing × 5,200 equity portfolios).[65]

In the Proposing Release, we estimated that the hour burden imposed by the proposed amendments to Form N–CSR, including the requirement for a fund to disclose its proxy voting record on Form N–CSR, would increase the hour burden per filing of a Form N–CSR by 10 hours, or 74,000 hours total.[66] This total burden hour estimate is comparable to our estimate of 74,880 total burden hours for filing Form N–PX. However, our estimate of the hour burden per filing of Form N–PX differs from the estimated hour burden per filing of Form N–CSR, in part because Form N–PX will be filed annually rather than semi-annually, and in part because we are calculating the hour burden for Form N–PX by portfolio, rather than by fund.[67]

Request for Comments

We request comments on the accuracy of our estimates with respect to Form N–PX. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–36–02. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this Release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments we are adopting will require funds to provide disclosure about how they vote proxies of the portfolio securities they hold. A fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, and to include disclosure about the availability of the fund's proxy voting record. This disclosure will be included in the fund's Statement of Additional Information (''SAI'') (and on Form N–CSR also, in the case of a closed-end fund's policies and procedures), which is not part of the fund's prospectus but is delivered to investors free of charge upon request. We are also requiring a fund to file with the Commission an annual report on Form N–PX, containing the fund's complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Our amendments will also require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. In addition, a fund will be required to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comments and data regarding the costs and benefits of the proposed form amendments. These comments are summarized below.

A. Benefits

The amendments to the registration statement and reporting forms that we are adopting will benefit fund investors, by providing them with access to information about how funds vote their proxies.

First, the amendments will provide better information to investors who wish to determine:

- To which fund managers they should allocate their capital, and
- Whether their existing fund managers are adequately maximizing the value of their shares.

The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of ''utmost good faith, and full and fair disclosure.'' [68] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[69] The increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties. Without disclosure about how the fund votes proxies, fund shareholders cannot evaluate this aspect of their managers' performance. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, investors will be better able to select funds that suit their preferences. Further, insofar as investors may over-emphasize certain of these factors, *e.g.*, past performance, in selecting funds, it may be beneficial to provide additional

[65] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[66] Proposing Release, *supra* note 4, 67 FR at 60834.

[67] We believe it is more appropriate to estimate the burden of complying with Form N–PX by portfolio, rather than by fund, as we estimated the burden of complying with Form N–CSR in the Proposing Release. We note that many funds do not have portfolios that hold equity securities, while many funds have multiple equity portfolios. Funds with multiple equity portfolios would be required to report their proxy voting records for each portfolio holding equity securities.

[68] *SEC v. Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[69] *See* Investment Advisers Act Release No. 2106, *supra* note 5. *See also* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

information to use in selecting funds. On a related point, we anticipate that over time, commercial third-party information providers will offer services that will enable investors to better analyze proxy voting by funds. These developments will further facilitate the benefits to fund investors from proxy vote disclosure.

Second, in some situations the interests of a fund's shareholders may conflict with those of its investment adviser with respect to proxy voting. This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests. The amendments require funds to disclose how they address such conflicts of interest in determining how to vote their proxies. This disclosure requirement may benefit fund shareholders by deterring voting decisions that are motivated by considerations of the interests of the fund's adviser rather than the interests of fund shareholders. Further, the increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties.

A third significant benefit of the amendments comes from providing stronger incentives to fund managers to vote their proxies conscientiously. The amendments could increase the incentives for fund managers to vote their proxies carefully, and thereby improve corporate performance and enhance shareholder value. The improved corporate performance that could result from better decisionmaking in corporate governance matters may benefit fund investors. In addition, other equity holders may benefit from the improvement to corporate governance that results from more conscientious proxy voting by fund managers. We note that assets held in equity funds account for approximately 18% of the $11 trillion market capitalization of all publicly traded U.S. corporations, and therefore funds exercise a considerable amount of influence in proxy votes affecting the value of these corporations.[70]

The benefits to the economy that will result from improved corporate governance are difficult to measure. While measuring the effects of such a rule involves a high degree of uncertainty, the scale of the aggregate portfolio holdings involved suggests that they may be substantial.[71]

A number of commenters addressed the benefits of the proposals identified in the Proposing Release. Most commenters who addressed the costs and benefits of our proposals concurred with our assessment of the benefits of the proposed requirements to disclose the policies and procedures that funds use to determine how to vote proxies relating to securities held in their portfolios.

Our proposals to require disclosure of the actual votes cast by funds generated divergent views as to the possible benefits of this disclosure. Many commenters, including individual investors, labor unions, trustees of pension and retirement plans, and funds that currently make their proxy voting records available to their shareholders agreed with our assessment of the benefits of this disclosure, and argued that these benefits would be substantial. These commenters stated that investors would benefit from the increased transparency resulting from disclosure of proxy voting records, by allowing investors to consider a fund's proxy voting record when making an investment decision.[72] In addition, commenters argued that disclosure of proxy votes cast would have beneficial effects across the entire U.S. economy, by encouraging better decisionmaking in corporate governance matters, which would enhance shareholder value of the issuers of portfolio securities and, in turn, benefit both investors in the fund and other investors in these issuers.

Many other commenters, however, argued that the disclosure of proxy votes cast would not benefit fund investors. These commenters, who consisted primarily of funds, investment advisers, and members of boards of directors of funds, argued that the funds with which they are associated have received virtually no requests from their shareholders for proxy voting information.[73] They also argued that investors who care about proxy vote disclosure can decide to invest in those funds that choose to disclose their votes.

The arguments of these commenters do not address two important considerations, however. First, investors consider many factors besides proxy voting histories when choosing their investment managers. If other factors—for example, fund performance—are more important to them than proxy voting, competitive pressures alone may cause few funds to reveal their proxy votes. The fact that market pressure has not forced many funds to reveal their votes merely suggests that investors do not value transparency of proxy votes as much as they value other factors. That does not mean that investors do not value transparency of proxy votes. In addition, the availability of proxy voting information may increase shareholder interest in the future. Second, these arguments do not consider the external benefits that all fund investors may obtain if, as discussed above, disclosure increases the incentives for fund managers to vote their proxies more carefully, and thereby improve corporate performance and enhance shareholder value.

Commenters who objected to the proposed disclosure requirement also questioned whether disclosure of proxy voting records would benefit investors by discouraging voting motivated by conflicts of interest, and noted that the Proposing Release did not provide any evidence of any fund failing to vote its proxies in its shareholders' best interests due to a conflict of interest. However, as noted above, funds may have strong incentives to vote in a certain way when, for example, a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. It may be difficult to prove that a particular vote in such a situation was motivated by a conflict of interest, and therefore disclosure may be the most effective means of deterring these conflicts.

In addition, commenters objected to the argument that proxy voting disclosure would result in benefits to all investors by encouraging funds to be more engaged in corporate governance of issuers held in their portfolios. The commenters asserted that funds were already sufficiently engaged in corporate governance issues, and that requiring disclosure of proxy votes by funds, but not other institutional investors, would unfairly single out one class of investors and force them to bear the burdens of the Commission's broader objectives with respect to the improvement of corporate governance.[74]

We recognize that while the costs of the disclosure requirements will be borne by funds, the benefits of improved corporate governance resulting from the disclosure will accrue to all investors. We note, however, that investors in a fund may benefit from any improved

[70] *See* Flow of Funds Accounts, *supra* note 7.

[71] *Id.*

[72] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[73] *See, e.g.*, ICI Letter, *supra* note 55, at 9; Letter of Robert D. Neary, Chairman of the Board, Armada Funds, at 2 (Dec. 4, 2002); Letter of Domenick Pugliese, Senior Vice President, Alliance Capital Management L.P. (Dec. 5, 2002).

[74] *See, e.g.*, ICI Letter, *supra* note 55, at 12.

oversight of its portfolio companies resulting from more careful proxy voting by other funds. In addition, we note that some of the other positive effects resulting from the disclosure, such as allowing investors to better evaluate whether their fund managers are voting proxies in accordance with their fiduciary duties, are benefits to fund investors.

We also note that, as adopted, the disclosure required by the amendments will provide the same benefits to investors as the proposal. However, the modifications to the proposal will mitigate the costs of disclosure, for funds and fund investors, by requiring a fund to file its proxy voting record on Form N–PX annually, by allowing a fund flexibility in determining how to disclose its proxy voting record to shareholders, and by not requiring a fund to disclose votes that are inconsistent with its policies and procedures.

B. Costs

The amendments will lead to some additional costs for funds, which may be passed on to fund shareholders. As discussed below, the amendments require new disclosure by a fund regarding how it votes proxies relating to portfolio securities it holds, in its SAI (and in Form N–CSR for closed-end funds), in annual reports on new Form N–PX, and in the fund's annual and semi-annual reports to shareholders. The direct costs of this disclosure will include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for typesetting, printing, and mailing of the disclosure).

First, the amendments require disclosure of the fund's proxy voting policies and procedures, and disclosure about the availability of its proxy voting record, in the fund's SAI (and in the case of a closed-end fund, disclosure of its policies and procedures on Form N–CSR also).[75] Because the SAI is typically not typeset and is only provided to shareholders upon request, we estimate that the external costs per fund of this additional disclosure in the SAI will be minimal. Similarly, because the disclosure in Form N–CSR will only be required to be provided to shareholders upon request, we estimate that the external costs of this disclosure on Form N–CSR will be minimal as well. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements will add 19,596 hours to the burden of completing Forms N–1A, N–2, N–3, and N–CSR.[76] We estimate that this additional burden will equal total internal costs of $1,350,948 annually, or $365 per fund.[77]

Second, the amendments will require a fund to file with the Commission an annual report on new Form N–PX, containing the fund's complete proxy voting record for the twelve month period ended June 30, by no later than August 31 of each year, and to make available to its shareholders the information contained in Form N–PX. We estimate that because this information will be available on the Commission's Web site, and because we anticipate that many funds will choose to make this information available to their shareholders on or through their Web sites, the external costs to funds (for typesetting, printing, and mailing) of providing this disclosure to shareholders will be minimal. For purposes of the Paperwork Reduction Act, we estimate that funds will spend 74,880 hours to comply with Form N–PX, or 14.4 hours per equity fund portfolio filing on Form N–PX annually.[78] Further, we estimate that funds will file reports on Form N–PX for 5,200 portfolios holding equity securities.[79] Thus, we estimate that the burden of filing Form N–PX will equal $5,162,227 in total internal costs annually, or $992 per equity fund portfolio.[80] We had originally proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR. However, we modified our proposal in response to one commenter who suggested that requiring disclosure on Form N–CSR would impose unnecessary costs and substantial administrative complexity for fund complexes that have funds with staggered fiscal year ends.

Third, with respect to reports to shareholders, funds will be required to include in their annual and semi-annual reports to shareholders disclosure about the availability of information regarding the fund's proxy voting policies and procedures, and the fund's proxy voting record. We estimate that to comply with these disclosure requirements, a typical fund will need to include at most one additional page in its annual and semi-annual reports to shareholders, at a typesetting cost of $55 per page and a printing cost of $0.025 per page.[81] We estimate that a typical fund may have, on average, 30,000 shareholder accounts;[82] therefore, the additional disclosure in shareholder reports will cost approximately $1,610 (($0.025 × 30,000 shareholder accounts, plus $55) × 2 reports per year) in external costs per fund. Based on the Commission's

[75] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR. We are not requiring closed-end funds to provide disclosure about the availability of their proxy voting policies and records on Form N–CSR.

[76] This represents 16,594 additional hours for Form N–1A, 1,196 additional hours for Form N–2, 480 additional hours for Form N–3, and 1,326 additional hours for Form N–CSR. The estimated total hour burden for disclosure of proxy voting policies and procedures differs from the figure of 18,270 hours used in the Proposing Release, because here we are including the estimated hour burden for disclosure of policies and procedures by closed-end funds on Form N–CSR as well.

[77] These figures are based on a Commission estimate that approximately 3,700 management investment companies are subject to the amendments and an estimated hourly wage rate of $68.94. The estimate of the number of funds is based on data derived from the Commission's EDGAR filing system. The estimated wage rate figure is based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys and programmers will divide time equally on compliance with the proxy voting disclosure requirements, yielding a weighted wage rate of $51.065 (($74.22 × .50) + (27.91 × .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 (51.065 × 1.35) = $68.94.

[78] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[79] This estimate is based on the staff's analysis of data from the Investment Company Institute and other sources indicating that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 ''hybrid'' or bond portfolios that may hold some equity securities.

[80] These figures are based on the Commission's estimate that approximately 3,700 funds, with 5,200 portfolios holding equity securities, will report their proxy voting records on Form N–PX, an estimate of 14.4 hours per equity fund portfolio filing on Form N–PX, and an estimated hourly wage rate of $68.94. *See supra* note 77.

[81] This estimate is based on information provided to the Division of Investment Management by registered investment companies regarding printing and typesetting costs for prospectuses and SAIs.

[82] This estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 9, at 63, 64.

estimate of 3,700 funds that are required to transmit annual and semi-annual reports to shareholders, we estimate these external costs will be $5,957,000 for the industry as a whole. In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements will add 3,700 burden hours for funds required to transmit shareholder reports, or one hour per fund, equal to internal costs of $255,078 for the industry annually, or $69 per investment company.[83]

Therefore, based on this analysis, we estimate that the total external and internal direct costs of the additional disclosure required by the amendments will be $12,725,253.[84] Because the amendments may have the effect of inducing fund advisers and fund boards to devote more resources to articulating their proxy voting policies and procedures in more detail, and to monitoring proxy voting decisions, they may result in higher expenses and advisory fees for funds. Some or all of these expenses may be passed on to shareholders.

Numerous commenters responded to the Commission's request for comment on the potential costs of the proposed disclosure requirements, particularly with respect to the required disclosure of their complete proxy voting records in reports on Form N–CSR, and the proposed disclosure of inconsistent votes in annual and semi-annual reports to shareholders. A number of commenters, principally members of the fund industry, argued that the Commission's estimates substantially underestimated the direct costs of the proposed disclosure requirements. First, commenters argued that the estimates omitted any start-up or one-time transition costs, noting that fund groups would need to establish systems or make arrangements with outside vendors to capture the information on proxy votes cast.[85] Second, a commenter argued that while some fund groups rely on outside service providers to vote their proxies, and these service providers may provide proxy voting records in electronic form, many fund groups do not use such outside service providers, and hence may have higher costs to compile their proxy voting records in electronic form.[86] Third, commenters argued that the costs of preparing the voting record disclosure may be higher for funds with significant holdings in foreign securities, because foreign proxies typically contain more proposals than those of U.S. issuers, and certain required data, such as ticker symbols and sponsorship of proposals, is not readily available for meetings of foreign portfolio companies.[87] Fourth, some fund groups also stated that they would incur costs by having to hire and train shareholder servicing personnel in order to respond to requests from shareholders for the proxy voting records disclosed in Form N–CSR.

We continue to believe that our estimates of the direct costs imposed by the disclosure are reasonable. First, we note that our cost estimates, which were based in part on the costs of funds that currently disclose their proxy votes, incorporate start-up costs and one-time transition costs amortized over time. In addition, we believe that start-up costs should be limited in most cases, because most funds currently keep track of information regarding their proxy votes. Second, our cost estimates are derived both from funds that outsource the collection and disclosure of proxy voting information, and from funds that perform these tasks internally. We anticipate that funds will choose to provide the required proxy voting information in the most cost-efficient manner. Third, with respect to the argument that the costs incurred by funds with significant foreign holdings may be higher than estimated, we note that we have modified our proposal to include an instruction permitting a fund to omit exchange ticker symbols and CUSIP numbers if they are not available through reasonably practicable means.[88] Finally, with respect to the argument that funds would incur costs by having to hire and train personnel to respond to requests for their proxy voting records, we note that we have modified our proposals to allow funds to choose to provide their proxy voting records to shareholders through Web site disclosure or upon request, which should reduce the number of shareholder requests received by phone.

Other commenters argued that the estimates of direct costs in the Proposing Release were reasonable. Several fund groups which currently disclose proxy voting records on their Web sites as well as through hard copy stated that based on their experience the costs of the proposed disclosure requirements would be minimal.[89] These commenters argued that funds should already be keeping track of their proxy votes internally, so that providing the required disclosure should be a matter of converting existing data to new fields for web interface.[90] One commenter noted that the expense ratios of funds that disclose their proxy votes are not higher than those of funds in general.[91]

A few commenters, including supporters and opponents of the proposed requirement to disclose proxy voting records, provided specific estimates of the direct costs of providing this disclosure. One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR, and estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and that reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours.[92] Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[93] These estimates are generally consistent with our estimate that proxy vote disclosure on Form N–PX will take 14.4 hours per equity portfolio per filing, at an annual cost of $992 per equity portfolio.[94] By

[83] These figures are based on a Commission estimate that approximately 3,700 investment companies will be subject to the amendments and an estimated hourly wage rate of $68.94. *See supra* note 77.

[84] The Commission has modified its estimate of the total external and internal costs of the additional disclosure required by the amendments from the estimate in the Proposing Release, to reflect that it is not adopting the proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures, and that it is requiring funds to disclose their proxy voting records annually on Form N–PX rather than semi-annually on Form N–CSR.

[85] *See, e.g.*, ICI Letter, *supra* note 55, at 14.

[86] ICI Letter, *supra* note 55, at 14–15.

[87] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 4 (Dec. 6, 2002).

[88] Instruction 2 to Item 1 of Form N–PX.

[89] *See, e.g.*, Letter of Amy Domini, CEO, Domini Social Investments LLC (Nov. 1, 2002); Letter of Thomas W. Grant, President, and Laurence A. Shadek, Chairman, Pax World Funds (Nov. 26, 2002); Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[90] *See, e.g.*, Letter of Timothy H. Smith, President and Chair, Social Investment Forum (Nov. 11, 2002).

[91] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[92] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 3 (Dec. 6, 2002).

[93] Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[94] By comparison, a third-party service provider of proxy voting services to funds and other institutional investors indicated to the staff that for a basic vote disclosure Web site it charges a $3,000 setup fee, a $12,000 base fee for disclosure for the first fund in the complex, and $1,000 for additional

Continued

contrast, a fund industry trade group estimated, based on a survey of eight fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[95]

We also note, as discussed above, that we have modified our proposals in three significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Third, rather than requiring funds to send their proxy voting records without charge and upon request, we are permitting them to choose to make their records available either upon request or by making available an electronic version on or through their Web sites.

The rules may also impose potential indirect costs on fund managers. Several commenters identified certain indirect costs that they argued were not addressed by the cost-benefit analysis in the Proposing Release. First, commenters argued that depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel.[96] These costs are difficult to quantify. Further, these commenters did not provide any evidence that this retaliatory action has occurred or might occur as a result of proxy vote disclosure. We also note that while it is possible that corporations could retaliate against fund managers if they knew that those fund managers had voted against them in the past, it is also possible that corporations could react by trying to work harder to develop cooperative relationships with fund managers. One additional advantage of the amendments is that they will permit fund managers to demonstrate credibly to management of a portfolio company that they have been willing to vote against the recommendations of corporate management in other cases.

Second, several commenters, including funds, claimed that required disclosure of proxy voting records would politicize the process of proxy voting and thereby impose costs on funds in order to address orchestrated campaigns in the media and elsewhere by special interest groups, which would detract from a fund's ability to concentrate on the management of its portfolio.[97] These commenters did not provide any estimates of the magnitude of these costs, however. Some commenters argued that proxy vote disclosure might lead to certain groups threatening to encourage their members and others to withdraw their investments from a fund complex unless the funds' adviser voted in a certain way.[98] To the extent that this possibility is real, and that fund managers may be pressured by large or influential shareholders to vote as directed, making voting policies and procedures available to investors will mitigate this influence to a large degree. Because of the disclosure requirements we are adopting, shareholders will be able to evaluate how closely fund managers follow their stated proxy voting policies, and to react adversely to fund managers who vote inconsistently with these policies.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[99] In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[100] The Commission has considered these factors.

The amendments requiring disclosure of funds' proxy voting policies and procedures and actual proxy voting records are intended to provide greater transparency for fund shareholders regarding the management of their investments in funds. The amendments may improve efficiency. The enhanced disclosure requirements will provide shareholders with greater access to information regarding the proxy voting policies and decisions of the funds in which they invest, which should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The amendments may also improve competition, as enhanced disclosure may prompt funds to seek to differentiate themselves based on their proxy voting policies and practices. Finally, the effects of the amendments on capital formation are unclear. Although, as noted above, we believe that the amendments will benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify.

In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation, or, conversely, would impose a burden on competition. The Commission received several letters addressing the effect of the proposed amendments on efficiency, competition, and capital formation. A number of commenters expressed concern that the required disclosure, particularly the requirements that funds disclose their proxy votes cast and any votes that are inconsistent with their proxy voting policies, may have adverse effects on competition and capital formation among funds. Commenters argued that the amendments would disadvantage funds relative to other institutional investors such as banks and pension funds, because funds would be the only class of investors not allowed to vote confidentially. Further, the commenters argued, depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel. Commenters also argued that requiring funds to disclose their proxy votes would subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which would detract from a fund's ability to

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funds after the first fund. Thus, a fund complex with 20 funds would pay $34,000 ($3,000 + $12,000 + (19 × $1,000)), or $1,700 per fund.

[95] ICI Letter, *supra* note 55, at 14–15.

[96] See, *e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[97] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 6–7 (Dec. 6, 2002); Letter of Philip L. Kirstein, General Counsel, Merrill Lynch Investment Managers, L.P., at 7 (Dec. 6, 2002).

[98] *See, e.g.*, Jonathan S. Bowater, Paul S. Lowengrub, and James C. Miller III, *The SEC's Proposal to Require Mutual Funds to Publish Proxy Votes,* at 23, *attachment to* Letter of Craig Tyle, General Counsel, Investment Company Institute (Jan. 16, 2003).

[99] 15 U.S.C. 78w(a)(2).

[100] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

concentrate on the management of its portfolio and ultimately harm fund shareholders. Finally, commenters asserted that the proposed disclosure requirements would impose substantial costs on funds, which would be passed on to their shareholders.

Other commenters, however, argued that proxy voting disclosure would improve competition by allowing investors who wish to consider proxy voting policies and records when deciding between two funds to do so. According to one such commenter, mandating proxy voting disclosure would thereby allow proxy voting policies and records to be fully ''valued'' by the marketplace.[101] Many commenters also asserted that because funds hold a significant percentage of equity securities, requiring proxy vote disclosure by funds would improve corporate governance and accountability among issuers of portfolio securities, which would benefit investors broadly. With respect to the argument that disclosure would harm funds by ''politicizing'' the proxy voting process, one commenter argued that to the extent that this meant funds would come under market pressure for behavior that their investors disapprove of, this would be a positive, not a negative, result.[102]

As discussed in more detail in the Cost-Benefit Analysis above, we continue to believe that the proxy vote disclosure required by the amendments will provide several benefits to fund investors. The amendments will provide better information to investors to use in selecting funds, and in determining whether fund managers are adequately maximizing the value of their shares. The amendments may also deter votes motivated by conflicts of interest. In addition, the amendments may provide stronger incentives to fund managers to vote their proxies carefully, which could thereby improve corporate performance and enhance shareholder value. With respect to the commenters' argument that the amendments may disadvantage funds by depriving them of confidential voting, we note that there is no evidence that retaliatory action by portfolio company management has occurred or might occur as a result of proxy vote disclosure, and that it is possible that this disclosure will encourage corporations to work harder to develop cooperative relationships with fund managers. With respect to the argument that disclosure of a fund's proxy voting record may subject it to pressure from special interest groups to vote in a certain manner, we note that to the extent that this possibility is real, making voting policies and procedures available to investors will mitigate this influence to a large degree. With respect to the argument that the proposed disclosure requirements would impose substantial costs on funds, we have modified certain of our proposals to mitigate costs by requiring a fund to file its proxy voting record annually on new Form N–PX rather than semi-annually on Form N–CSR, by eliminating the requirement that a fund disclose its proxy votes (or failures to vote) that are inconsistent with its proxy voting policies and procedures, and by permitting a fund to choose to make available to its shareholders its record of how it voted proxies relating to portfolio securities on or through its Web site or upon request.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to require funds to provide disclosure about how they vote proxies of portfolio securities they hold. Under the amendments, a fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote the proxies of portfolio securities. The amendments also require a fund to file with the Commission on new Form N–PX, and to make available to its shareholders, on or through its Web site or upon request, its record of how it voted proxies relating to portfolio securities.

Specifically, a fund will be required to disclose in its statement of additional information (''SAI'') its policies and procedures used to determine how to vote proxies of the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders.[103] The amendments also require a fund to file with the Commission, in an annual report on Form N–PX, its complete proxy voting record for the most recent twelve-month period ended June 30. The amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release included the IRFA and solicited comments on it.

A. Reasons for, and Objectives of, Amendments

Proxy voting decisions may play an important role in maximizing the value of a fund's investments for its shareholders. Requiring funds to disclose specific proxy voting information could enable shareholders to make an informed assessment as to whether funds are utilizing proxy voting for the benefit of fund shareholders. We are adopting these amendments because we believe that requiring management investment companies to disclose their proxy policies and procedures as well as voting records will result in greater transparency for fund shareholders regarding the overall management of their investments. We also believe it is possible to achieve this improved disclosure efficiently at minimal cost because of recent advances in technology, such as the Internet.

B. Significant Issues Raised by Public Comment

No comments specifically addressed the IRFA. However, a few commenters asserted that the proposed amendments that would require disclosure of a fund's proxy voting record would have a negative impact on small entities.[104] These commenters noted that the loss of confidential voting that would result from the disclosure of proxy votes would raise the risk that portfolio company management might retaliate against a fund, and that this risk of retaliation would be disproportionately greater for small funds. One commenter

[101] Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[102] Letter of Richard L. Trumka, Secretary-Treasurer, AFL–CIO, at 4 (Dec. 6, 2002).

[103] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR.

[104] *See, e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002); ICI Letter, *supra* note 55, at 16.

argued that small funds should not be required to bear the burden and costs of providing proxy voting disclosure, when many much larger institutional investors, such as pension plans, insurance companies, common and collective trust funds, and hedge funds would not be required to do so.[105] On the other hand, an association of ''socially responsible'' funds commented that some smaller fund companies have been providing proxy voting disclosure for some time, with little cost to their investors.[106]

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[107] Approximately 205 out of 3700 investment companies that will be affected by this rule meet this definition.[108]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments require a fund to disclose in its SAI (and in Form N–CSR, in the case of a closed-end fund) the policies and procedures it uses to determine how to vote proxies for the securities held in its portfolio, and to provide disclosure in its SAI regarding the availability of its proxy voting record to shareholders. The amendments also require a fund to file with the Commission, on Form N–PX, its complete proxy voting record for its most recent twelve-month period ended June 30. Finally, the amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that a description of the policies and procedures that the fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

The Commission estimates some one-time formatting and ongoing costs and burdens that will be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing proxy voting policies and procedures to fund shareholders; filing proxy voting records with the Commission on Form N–PX; and disclosing voting records through Web site disclosure or upon request. These costs could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultations with a number of fund complexes, including smaller fund complexes, that many investment companies presently collect in-house or outsource the collection of proxy voting information on a basis at least as current as annually and, therefore, that the marginal cost increases for most funds will be minimal.

E. Agency Action To Minimize Effect on Small Entities

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency regarding a fund's proxy voting polices and procedures, as well as records of votes cast. Different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure that small entities would have to provide shareholders, may create the risk that those shareholders would not receive sufficient information to make an informed evaluation as to whether the fund's board and its investment adviser are complying with their fiduciary duties to vote proxies of portfolio securities in the best interest of fund shareholders. We believe it is important for the proxy disclosure required by the amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the amendments for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

We note, however, that we have modified our proposals in response to comments, in part to reduce the regulatory burden on funds, including small funds. As adopted, our amendments will require a fund to provide disclosure of its proxy voting record annually on Form N–PX, rather than semi-annually. In addition, we are not adopting the proposed requirement that a fund's annual and semi-annual reports to shareholders include all votes that are inconsistent with the fund's proxy voting policies and procedures. Further, we are modifying our proposed requirement that a fund must send its proxy voting record without charge and upon request, by permitting a fund to make its proxy voting record available on or through its Web site instead.

VIII. Statutory Authority

The Commission is adopting amendments to Forms N–1A, N–2, N–3, and N–CSR pursuant to authority set forth in Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3], Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is adopting new rule 30b1–4 and new Form N–PX pursuant to authority set forth in Sections 8, 30, 31, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37].

List of Subjects

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[105] Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[106] Letter of Timothy H. Smith, President and Chair, Social Investment Forum, at 3 (Nov. 11, 2002).

[107] 17 CFR 270.0–10.

[108] This estimate is based on figures compiled by the Commission's staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

4. Section 270.30b1–4 is added to read as follows:

§ 270.30b1–4 Report of proxy voting record.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file an annual report on Form N–PX (§ 274.129 of this chapter) not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 is amended by revising the sectional authority for § 274.128 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

6. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Item 13, adding paragraph (f); and

b. In Item 22, adding paragraphs (b)(7) and (8) and (c)(5) and (6).

These additions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–1A

* * * * *

Item 13. Management of the Fund

* * * * *

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

Instructions.

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must remain available on or through the Fund's Web site for as long as the Fund remains subject to the requirements of Rule 30b1–4 (17 CFR 270.30b1–4) and discloses that the Fund's proxy voting record is available on or through its Web site.

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(7) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(8) A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instructions.

1. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on

Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must remain available on or through the Fund's Web site for as long as the Fund remains subject to the requirements of Rule 30b1–4 (17 CFR 270.30b1–4) and discloses that the Fund's proxy voting record is available on or through its Web site.

(c) * * *

(5) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at http://www.sec.gov.

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(6) A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. Instructions 1 and 2 to Item 22(b)(8) also apply to this Item 22(c)(6).

* * * * *

7. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. In Item 18, adding paragraph 16;

b. In Item 23, removing ''and'' from the end of Instruction 4.e.;

c. In Item 23, removing the period from the end of Instruction 4.f. and in its place adding a semi-colon;

d. In Item 23, adding Instructions 4.g. and 4.h.;

e. In Item 23, removing ''and'' from the end of Instruction 5.c.;

f. In Item 23, removing the period from the end of Instruction 5.d. and in its place adding a semi-colon;

g. In Item 23, adding Instruction 5.e and 5.f.;

h. In Item 23, redesignating Instruction 6 as Instruction 7; and

i. In Item 23, adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–2

* * * * *

Item 18. Management

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16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instructions.

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

Item 23. Financial Statements

* * * * *

Instructions:

* * * * *

4. * * *

g. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

h. a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

e. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote

proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

f. a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

6. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N–CSR within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

8. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 20, adding paragraph (o);

b. In Item 27(a), removing ''and'' from the end of Instruction 4(v);

c. In Item 27(a), removing the period from the end of Instruction 4(vi) and in its place adding a semi-colon;

d. In Item 27(a), adding Instructions 4(vii) and 4(viii);

e. In Item 27(a), removing ''and'' from the end of Instruction 5(iii);

f. In Item 27(a), removing the period from the end of Instruction 5(iv) and in its place adding a semi-colon;

g. In Item 27(a), adding Instructions 5(v) and 5(vi);

h. In Item 27(a), redesignating Instruction 6 as Instruction 7; and

i. In Item 27(a), adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–3

* * * * *

Item 20. Management

* * * * *

(o) Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's contractowners, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

Instructions:

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(vii) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(viii) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the

Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

(v) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(vi) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

6. (i) When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 20(o) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(ii) If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(iii) If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by adding new Item 7 to read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–CSR

* * * * *

Item 7. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies

A closed-end management investment company that is filing an annual report on this Form N–CSR must, unless it invests exclusively in non-voting securities, describe the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, including the procedures that the company uses when a vote presents a conflict between the interests of its shareholders, on the one hand, and those of the company's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the company, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the company's investment adviser, or any other third party, that the company uses, or that are used on the company's behalf, to determine how to vote proxies relating to portfolio securities.

Instruction. A company may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

* * * * *

10. Section 274.129 is added to read as follows:

§ 274.129 Form N–PX, annual report of proxy voting record of registered management investment company.

This form shall be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), for annual reports to be filed not later than August 31 of each year, containing the company's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and § 270.30b1–4 of this chapter.

11. Add Form N–PX (referenced in § 274.129) to read as follows:

Note: The text of Form N–PX will not appear in the *Code of Federal Regulations.*

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response:

United States Securities and Exchange Commission, Washington, DC 20549

Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Company

Investment Company Act file number

_____

(Exact name of registrant as specified in charter)

(Address of principal executive offices) (Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code:

Date of fiscal year end:

Date of reporting period:

Form N–PX is to be used by a registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1–4 thereunder (17 CFR 270.30b1–4). The Commission may use the information provided on Form N–PX in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–PX, and the Commission will make this information public. A registrant is not

required to respond to the collection of information contained in Form N–PX unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–PX

Form N–PX is to be used for reports pursuant to Section 30 of the Investment Company Act of 1940 (the ''Act'') and Rule 30b1–4 under the Act (17 CFR 270.30b1–4) by all registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file their complete proxy voting record not later than August 31 of each year for the most recent twelve-month period ended June 30.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

D. Incorporation by Reference

No items of this Form shall be answered by incorporating any information by reference.

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–PX have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Proxy Voting Record

Disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the registrant was entitled to vote:

(a) The name of the issuer of the portfolio security;

(b) The exchange ticker symbol of the portfolio security;

(c) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(d) The shareholder meeting date;

(e) A brief identification of the matter voted on;

(f) Whether the matter was proposed by the issuer or by a security holder;

(g) Whether the registrant cast its vote on the matter;

(h) How the registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and

(i) Whether the registrant cast its vote for or against management.

Instructions

1. In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term ''series'' means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f–2(a) under the Act (17 CFR 270.18f–2(a)).

2. The exchange ticker symbol or CUSIP number required by paragraph (b) or (c) of this Item may be omitted if it is not available through reasonably practicable means, *e.g.*, in the case of certain securities of foreign issuers.

Signatures

[See General Instruction F]

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

Dated: January 31, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2951 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2106; File No. S7–38–02]

RIN 3235–AI65

Proxy Voting by Investment Advisers

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that address an investment adviser's fiduciary obligation to its clients when the adviser has authority to vote their proxies. The new rule requires an investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, and to disclose to clients how they may obtain information on how the adviser has voted their proxies. The rule amendments also require advisers to maintain certain records relating to proxy voting. The rule and rule amendments are designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted.

DATES: *Effective Date:* March 10, 2003.

Compliance Date: Advisers must comply with the new rule and amendments by August 6, 2003. Section III of this Release contains more information on the compliance date.

FOR FURTHER INFORMATION CONTACT: Daniel S. Kahl, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at (202) 942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting new rule 206(4)–6 [17 CFR 275.206(4)–6] and amendments to rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act'').[1]

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I. Background

Investment advisers registered with us have discretionary authority to manage $19 trillion of assets on behalf of their clients, including large holdings in equity securities. In most cases, clients give these advisers authority to vote proxies relating to equity securities. This enormous voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and influence the governance of corporations. Advisers are thus in a position to significantly affect the future of corporations and, as a result, the future value of corporate securities held by their clients.

The federal securities laws do not specifically address how an adviser must exercise its proxy voting authority for its clients. Under the Advisers Act, however, an adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting.[2] The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies.[3] To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.

An adviser may have a number of conflicts that can affect how it votes proxies. For example, an adviser (or its affiliate) may manage a pension plan, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to a company whose management is soliciting proxies.[4] Failure to vote in favor of management may harm the adviser's relationship with the company. The adviser may also have business or personal relationships with participants in proxy contests, corporate directors or candidates for directorships. For example, an executive of the adviser may have a spouse or other close relative who serves as a director or executive of a company.[5]

Our concern with these conflicts and how they affect clients of advisers led us to propose, on September 20, 2002, new rule 206(4)–6 and amendments to rule 204–2.[6] The proposals were designed to prevent material conflicts of interest from affecting the manner in which advisers vote clients' proxies. We proposed to require advisers to adopt and implement policies and procedures for voting proxies in the best interest of clients, to describe the procedures to clients, and to tell clients how they may obtain information about how the adviser has actually voted their proxies.

We received several thousand comment letters; nearly all supported adoption of the rule.[7] Commenters, including many advisers and groups representing advisers, agreed that advisers should have proxy voting procedures, and supported clients' right to information on how their proxies are voted. Several, however, urged that we revise the proposed recordkeeping requirements of rule 204–2 to make them less burdensome on advisers. We are today adopting rule 206(4)–6 as proposed, and are adopting amendments to rule 204–2 with certain changes that respond to issues raised by commenters.

II. Discussion

A. Rule 206(4)–6, Proxy Voting

Under rule 206(4)–6, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act for an investment adviser to exercise voting authority with respect to client securities, unless (i) the adviser has adopted and implemented written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of its clients, (ii) the adviser describes its proxy voting procedures to its clients and provides copies on request, and (iii) the adviser discloses to clients how they may obtain information on how the adviser voted their proxies.[8]

1. Advisers Subject to the Rule

The rule applies, as proposed, to all investment advisers registered with us that exercise proxy voting authority over client securities. While several commenters urged that we create exceptions, none offered persuasive

[1] Unless otherwise noted, when we refer to rule 204–2 or any paragraph of the rule, we are referring to 17 CFR 275.204–2 of the Code of Federal Regulations in which the rule is published, as amended by this release, and when we refer to rule 206(4)–6 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–6 of the Code of Federal Regulations as adopted by this release.

[2] *See SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (interpreting section 206 of the Advisers Act [15 U.S.C. 80b–6]).

[3] As we discuss later in this Release, we do not mean to suggest that an adviser that does not exercise every opportunity to vote a proxy on behalf of its clients would thereby violate its fiduciary obligations to those clients under the Act.

[4] The adviser may also have a business relationship not with the company but with a proponent of a proxy proposal that may affect how it casts votes on clients' securities. For example, the adviser may manage money for an employee group.

[5] Whether the adviser's relationships with these other parties creates a material conflict will depend on the facts and circumstances. However, even in the absence of efforts by these parties to persuade the adviser how to vote, the value of the relationship to the adviser can create a material conflict. The Supreme Court has made it clear that the Advisers Act was intended to eliminate or expose advisers' unconscious biases as well as conscious ones. *Capital Gains, supra* note 2, at 191–192.

[6] *Proxy Voting by Investment Advisers,* Investment Advisers Act Release No. 2059 (Sept. 20, 2002) [67 FR 60841 (Sept. 26, 2002)] (''Proposing Release'').

[7] The Proposing Release was issued with a companion release proposing amendments that would require mutual funds to disclose policies and procedures they use to vote proxies on their portfolio securities, and to make available to their shareholders the specific proxy votes they cast. *See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management* Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60827 (Sept. 26, 2002)] (''Fund Proposing Release''). Commenters submitted ten different types of form letters; five of these (approximately 2800 letters) and a large number of other letters were submitted in response to both the Proposing Release and the Fund Proposing Release. In addition, some letters submitted in response to the Proposing Release also raised points pertaining to the Fund Proposing Release, and vice versa.

[8] Nothing in this rule reduces or alters any fiduciary obligation applicable to any investment adviser (or person associated with any investment adviser).

arguments why an adviser that accepts voting authority ought not be required to have procedures in place to ensure that it meets its fiduciary obligations to clients.[9]

Advisers that have implicit as well as explicit voting authority must comply with rule 206(4)–6. The rule thus applies when the advisory contract is silent but the adviser's voting authority is implied by an overall delegation of discretionary authority.[10] The rule does not apply, however, to advisers that provide clients with advice about voting proxies but do not have authority to vote the proxies.[11]

2. Policies and Procedures

Under rule 206(4)–6, advisers that exercise voting authority with respect to client securities must adopt proxy voting policies and procedures.[12] The policies and procedures must be in writing. They must be reasonably designed to ensure that the adviser votes in the best interest of clients.[13] And they must describe how the adviser addresses material conflicts between its interests and those of its clients with respect to proxy voting.[14] Most commenters supported these requirements, and many advisers informed us that they already had written policies in place.

We did not propose, and are not adopting, specific policies or procedures for advisers. Nor are we, as some commenters requested, providing a list of approved procedures. Investment advisers registered with us are so varied that a ''one-size-fits-all'' approach is unworkable. By not mandating specific policies and procedures, we leave advisers the flexibility to craft policies and procedures suitable to their businesses and the nature of the conflicts they face. As noted by some commenters, some advisers (including many smaller firms) are unlikely to face any material conflicts of interest, in which case their procedures could be very simple.[15]

An adviser's proxy voting policies and procedures should be designed to enable the firm to resolve material conflicts of interest with its clients before voting their proxies. As we discussed above, these obligations involve both a duty to vote client proxies and a duty to vote them in the best interest of clients.[16]

a. Voting Client Proxies

The duty of care requires an adviser with voting authority to monitor corporate actions and vote client proxies. Therefore, the adviser should have procedures in place designed to ensure that it fulfills these duties.[17] We do not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations. There may even be times when refraining from voting a proxy is in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client.[18] An adviser may not, however, ignore or be negligent in fulfilling the obligation it has assumed to vote client proxies.[19]

b. Resolving Conflicts of Interest

An adviser's policies and procedures under the rule must also address how the adviser resolves material conflicts of interest with its clients. Some commenters urged us to approve methods that would resolve material conflicts. Clearly, an adviser's policy of disclosing the conflict to clients and obtaining their consents before voting satisfies the requirements of the rule and, when implemented, fulfills the adviser's fiduciary obligations under the Advisers Act.[20] In the absence of client disclosure and consent,[21] we believe that an adviser that has a material conflict of interest with its clients must take other steps designed to ensure, and must be able to demonstrate that those steps resulted in, a decision to vote the proxies that was based on the clients' best interest and was not the product of the conflict.[22]

[9] We note that, while we are not creating an exception for smaller firms, as some commenters suggested, smaller firms without financial industry affiliates are likely to have few or even no potential conflicts of interest relating to proxy voting, in which case their procedures could be much simpler and compliance with the rule would be commensurately less burdensome.

[10] Several commenters argued that the rule should not apply to advisers that have not received explicit authority to vote proxies. Advisers who believe that the application of the rule to them would be inappropriate could revise their advisory contracts (or make other disclosure to clients) to make explicit their responsibility (or lack of responsibility) for voting proxies.

[11] The Advisers Act's general anti-fraud provisions would, however, continue to require such advisers to disclose any material conflict to the clients receiving the advice.

[12] Rule 206(4)–6(a).

[13] Nothing in the rule prevents an adviser from having different policies and procedures for different clients. Thus, the board of directors of an investment company could adopt and require an investment adviser to use different policies and procedures than the adviser uses with respect to its other clients.

[14] Advisers' proxy voting policies and procedures should address (although the rule does not require) how the adviser will vote proxies (or what factors it will take into consideration) when voting on particular types of matters, such as changes in corporate governance structures, adoption or amendments to compensation plans (including stock options) and matters involving social issues or corporate responsibility. The policies and procedures of an adviser whose advisory activities are limited to investments in investment companies would, of course, address different matters, including, for example, approval of advisory contracts, distribution plans (''12b–1 plans''), and mergers.

[15] Even the smallest firm, however, may from time to time have conflicts of interests with clients. For example, an adviser that is solicited to vote client proxies approving an increase in fees deducted from mutual fund assets pursuant to a 12b–1 plan has a conflict of interest with its clients invested in the fund if the fees are a source of compensation for the adviser.

[16] While the rule allows for flexibility, it does not allow for mere boilerplate. Procedures that merely declare that all proxies will be voted in the best interests of clients would not be sufficient to meet the rule's requirements.

[17] We suggested in the Proposing Release that effective procedures should identify personnel responsible for monitoring corporate actions, those responsible for making voting decisions, and those responsible for ensuring that proxies are submitted timely. Commenters felt that less detail could suffice and asked whether it was necessary for procedures to name individuals. Under the rule, advisers can write procedures that fit their firm. In a firm with few employees, those roles may be self-evident. Large firms, however, may need to clarify which department or group of employees has what responsibility in order to guard against non-compliance.

[18] For example, casting a vote on a foreign security may involve additional costs such as hiring a translator or traveling to the foreign country to vote the security in person.

[19] The scope of an adviser's responsibilities with respect to voting proxies would ordinarily be determined by the adviser's contracts with its clients, the disclosures it has made to its clients, and the investment policies and objectives of its clients. An adviser's fiduciary duties to a client do not necessarily require the adviser to become a ''shareholder activist'' by, for example, actively engaging in soliciting proxies or supporting or opposing matters before shareholders. As a practical matter, advisers will determine whether to engage in such activism based on its costs and expected benefits to clients. *Cf.* Department of Labor, Interpretive Bulletin Relating to Written Statements of Investment Policy, Including Proxy Voting Guidelines, 29 CFR 2509.94–2 at § 3 (2001).

[20] In this regard, we believe that an adviser to an investment company would satisfy its fiduciary obligations under the Advisers Act if, before voting the proxies, it fully discloses its conflict to the investment company's board of directors or a committee of the board and obtains the board's or committee's consent or direction to vote the proxies.

[21] An adviser seeking a client's consent must provide the client with sufficient information regarding the matter before shareholders and the nature of the adviser's conflict to enable the client to make an informed decision to consent to the adviser's vote. Boilerplate disclosure in a client brochure regarding generalized conflicts would be inadequate.

[22] Courts have taken a similar approach with respect to the business judgment rule afforded directors of corporations. When corporate directors take action notwithstanding their conflict of interest, they lose the deference that they normally receive under the ''business judgment rule,'' and must demonstrate that their corporate action was fair to the corporation and its shareholders. *Cede & Co.* v. *Technicolor, Inc.,* 634 A.2d 345, 361 (Del. 1993). ''The rationale for employing the intrinsic fairness standard is that where corporate fiduciaries, because of a conflict, are disabled from

Continued

Advisers today use various means of ensuring that proxy votes are voted in their clients' best interest and not affected by the advisers' conflicts of interest.[23] An adviser that votes securities based on a pre-determined voting policy could demonstrate that its vote was not a product of a conflict of interest if the application of the policy to the matter presented to shareholders involved little discretion on the part of the adviser.[24] Similarly, an adviser could demonstrate that the vote was not a product of a conflict of interest if it voted client securities, in accordance with a pre-determined policy, based upon the recommendations of an independent third party. An adviser could also suggest that the client engage another party to determine how the proxies should be voted, which would relieve the adviser of the responsibility to vote the proxies.[25] Other policies and procedures are also available; their effectiveness (and the effectiveness of any policies and procedures) will turn on how well they insulate the decision on how to vote client proxies from the conflict.

3. Disclose How To Obtain Voting Information

Rule 206(4)–6 requires advisers to disclose to clients how they can obtain information from the adviser on how their securities were voted.[26] Commenters supported advisers' disclosure of actual votes.[27] Many advisers indicated that their clients, particularly institutional clients, do request this information and that the advisers already have procedures in place to facilitate clients' access to this information.

Many investors urged that rule 206(4)–6 require that advisers publicly disclose how they vote their client proxies. In a companion release, we are today adopting rules requiring that investment companies publicly disclose how they vote their proxies.[28] We are requiring public disclosure as a means of informing *fund shareholders* how the fund (or its adviser) voted proxies of the shareholders' fund. Public disclosure is unnecessary for advisers to communicate to each client how the adviser has voted that client's proxies. Moreover, public disclosure of proxy votes by some advisers would reveal client holdings and thus client confidences. We have determined, therefore, not to require advisers to disclose their votes publicly.

4. Describe Policies and Procedures

Rule 206(4)–6 also requires advisers to describe their proxy voting policies and procedures to clients, and upon request, to provide clients with a copy of those policies and procedures.[29] Commenters strongly supported this requirement, which we are adopting as proposed. The description should be a concise summary of the adviser's proxy voting process rather than a reiteration of the adviser's policies and procedures, and should indicate that a copy of the policies and procedures is available upon request. If a client requests a copy of the policies and procedures, the adviser must supply it.

B. Rule 204–2, Recordkeeping

Investment advisers expressed significant concerns with the compliance burdens of the proposed recordkeeping requirements and suggested several improvements. We are adopting the amendments to rule 204–2 with modifications that should substantially reduce those compliance burdens. Under rule 204–2, as amended, advisers must retain (i) their proxy voting policies and procedures; (ii) proxy statements received regarding client securities; (iii) records of votes they cast on behalf of clients; (iv) records of client requests for proxy voting information,[30] and (v) any documents prepared by the adviser that were material to making a decision how to vote, or that memorialized the basis for the decision.[31] In response to suggestions from commenters, the amendments permit an adviser to rely on proxy statements filed on our EDGAR system instead of keeping its own copies, and to rely on proxy statements and records of proxy votes cast by the adviser that are maintained with a third party such as a proxy voting service, provided that the adviser has obtained an undertaking from the third party to provide a copy of the documents promptly upon request.

III. Effective Date

New rule 206(4)–6 and the amendments to rule 204–2 are effective on March 10, 2003. Advisers must comply with the new rule and amendments by August 6, 2003. By this date, advisers subject to the new rule must have adopted and implemented the required proxy voting policies and procedures. Also by this date, advisers must have provided clients with a description of their policies and procedures, and disclosure of how the clients may obtain information from the adviser on how it voted with respect to their securities.

Advisers may choose any means to make this disclosure, provided that it is clear, not ''buried'' in a longer document, and received by clients by August 6, 2003. For example, an adviser could send clients the disclosure together with a periodic account statement, deliver it in a separate mailing, or include it in its brochure (or Part II of Form ADV). Advisers that use their brochure or Part II to make the disclosure must deliver (not merely offer) the revised brochure to existing clients by August 6, 2003, and should accompany the delivery with a letter identifying the new disclosure.

IV. Cost-Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits resulting from its rules. While investment advisers typically exercise proxy voting authority

safeguarding the interests of the stockholders to whom they owe a duty, the Court will furnish compensatory procedural safeguards by imposing upon the fiduciaries an exacting burden of establishing the utmost propriety and fairness of their actions.'' *Van de Walle* v. *Unimation, Inc.* 1991 Del. Ch. LEXIS 27, at 30 (Mar. 6, 1991).

[23] We believe an adviser that has assumed the responsibility of voting client proxies cannot fulfill its fiduciary responsibilities to its clients by merely refraining from voting the proxies. Such proxies would not be voted in the best interest of the clients.

[24] Of course, the pre-determined policy must be designed to further the interests of clients rather than the adviser. Thus, an adviser could not, consistent with its duty, adopt a pre-determined policy of voting proxies in favor of the management of companies with which it does business. We recognize, however, that in many cases, voting policies are not sufficiently specific to determine how the vote will be cast.

[25] *See, e.g.,* Evergreen Investment Management Company, LLC, SEC Staff No-Action Letter at n. 6 (Feb. 13, 2002) (client mutual fund hired third party to vote proxies in merger contest involving the adviser's parent corporation).

[26] Rule 206(4)–6(b). We expect most advisers will make this disclosure in their written brochure required under rule 204–3 [17 CFR 275.204–3].

[27] The rule does not prescribe a client's right to this information because we do not believe a prescription is necessary. Although a few commenters suggested that the rule should prescribe a right, other commenters including investment advisers agreed with us that a client already has the right to information about how that client's securities were voted. *See* Restatement (Second) of Agency § 381.

[28] *Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies*, Investment Company Act Release No. 25922 (Jan. 31, 2003).

[29] Rule 206(4)–6(c).

[30] As adopted, the amendments only require an adviser to keep all *written* requests from clients and any *written* response from the adviser (to either a written or an oral request).

[31] Rule 204–2(c)(2). These records (other than proxy statements on file with our EDGAR system or maintained by a third party and proxy votes maintained by a third party) must be maintained in an easily accessible place for five years, the first two in an appropriate office of the investment adviser. Rule 204–2(e)(1). These are the same retention requirements that apply to most other books and records under rule 204–2.

as part of their discretionary management of client securities, the federal securities laws do not specifically address how advisers must exercise this power. New rule 206(4)–6 is designed to ensure that advisers that have proxy voting authority vote clients' securities in the clients' best interest and provide clients with information on how their securities are voted. In addition, these advisers must keep records that permit the Commission to confirm their compliance with rule 206(4)–6.

Investment advisers registered with us have discretionary authority to manage $19 trillion on behalf of their clients, including large holdings in equity securities. In most cases, clients give these advisers authority to vote proxies relating to equity securities. This enormous voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and influence the governance of corporations. Advisers are thus in a position to significantly affect the future of corporations and, as a result, the future value of corporate securities held by their clients.

Under the Advisers Act, an adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting. The duty of care requires an adviser that has authority to vote its client's proxies to monitor corporate events and to vote the proxies. To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.

An adviser may have conflicts that can affect how it votes proxies. For example, the adviser (or its affiliate) may manage a pension plan, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to a company whose management is soliciting proxies. Failure to vote in favor of management may harm the adviser's relationship with the company. The adviser may also have business or personal relationships with other proponents of proxy proposals, participants in proxy contests, corporate directors or candidates for directorships. For example, the adviser may manage money for an employee group, or an executive of the adviser may have a spouse or other close relative who serves as a director or executive of a company. Our concern with these conflicts and how they affect clients of advisers led us to propose, on September 20, 2002, new rule 206(4)–6 and amendments to rule 204–2.[32]

New rule 206(4)–6 is designed to prevent material conflicts of interest from affecting the manner in which advisers vote clients' proxies. The rule requires SEC-registered investment advisers that have authority to vote clients' proxies to adopt written policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interest of its clients, including procedures to address any material conflict that may arise between the interest of the adviser and the clients. The adviser must describe these policies and procedures to clients, provide copies of the policies and procedures to clients upon their request, and disclose to clients how they may obtain information from the adviser about how the adviser has voted their proxies.

The amendments to rule 204–2 under the Advisers Act require SEC-registered investment advisers that vote client proxies to maintain specified records with respect to those clients. These records will permit our examiners to ascertain the advisers' compliance with new rule 206(4)–6.

Based on advisers' filings with us, we estimate that the majority of investment advisers registered with us will be subject to the new rule. SEC-registered advisers are not currently required to submit information to us describing their proxy voting practices. However, according to our records as of September 9, 2002, 6,203 of the 7,687 advisers registered with us manage client assets on a discretionary basis.[33] Because in most instances, advisers with discretionary investment authority are given authority to vote proxies relating to equity securities under management, it is likely that significant numbers of these 6,203 advisers vote proxies on behalf of one or more clients in connection with providing their discretionary asset management services.[34]

The Commission has given consideration to the costs of new rule 206(4)–6 and amendments to rule 204–2, as well as the benefits. In the Proposing Release we requested comment and specific data regarding these costs and benefits. The comments we received were mostly general in nature and are discussed below. We received one comment that included data and estimated the cost of our proposal to be slightly higher than our figure. In light of the changes we are making to the rules as adopted, we believe our original figures accurately estimate the costs of the rule and rule amendments.

B. Benefits

Rule 206(4)–6 will, we believe, provide several important benefits to advisory clients. Requiring advisers to have written proxy voting policies and procedures that address material conflicts of interest will benefit clients by ensuring that their advisers do resolve conflicts in the clients' best interests. Requiring advisers to describe their proxy voting policies and procedures to clients and to furnish copies to clients upon request will benefit clients by allowing them to understand how their advisers vote proxies. Clients will also be in a better position to evaluate whether their advisers' policies and procedures meet their own objectives and expectations. Many individual commented that they do want their advisers' policies and procedures to be available to them. Clients who do not approve of how their adviser votes their proxies may decide to reclaim the responsibility to vote proxies, provide the adviser with instructions on how to vote their proxies, or seek a different adviser whose voting policies they approve. Finally, requiring advisers to disclose to their clients how the clients can obtain information on how the advisers voted their proxies will benefit clients by allowing them to be fully informed about how their shares were voted and to confirm that their advisers are following their voting policies and procedures.

The benefit of codifying these practices through a rule is difficult to quantify, for two reasons. First, commenters confirmed that some advisory clients are already receiving these benefits as a matter of practice. Many advisers commented that they already have proxy voting policies and procedures in place, and that they already provide much of this information to clients. Second, the adviser is an agent and fiduciary of its clients; it already owes them a fiduciary duty to vote proxies in the clients' best interest, and must provide them with information on how their proxies were voted.

[32] *See supra* note 6.

[33] This estimate is based on information submitted by SEC-registered advisers on Form ADV [17 CFR 279.1]. 6,203 SEC-registered investment advisers reported on Part 1A of their Form ADV that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[34] Part 1A of Form ADV does not require advisers to describe the types of securities for which they hold discretionary investment authority. Some advisers that report having discretionary assets under management may manage only securities for which proxy voting issues do not arise, such as government or other debt obligations.

C. Costs

The Commission anticipates that rule 206(4)–6 and the amendments to rule 204–2 will impose certain costs on advisers that have voting authority over client securities.[35] Advisers that do not yet have proxy voting policies and procedures in place will incur costs in connection with establishing them. Because the rule does not require specific policies and procedures, but permits the adviser flexibility to craft policies and procedures suitable to its business and conflicts, we believe that the costs will very significantly from adviser to adviser based on factors such as size, investment philosophy, and clientele. Moreover, a number of very large advisers—likely the firms that would require the most detailed and complex policies and procedures—commented that they already had proxy voting policies and procedures in operation. Advisers that have established policies and procedures may incur only limited costs in revising them to meet the rule's requirements.

Advisers will also incur costs in preparing descriptions of their voting policies and procedures, furnishing the descriptions to clients (and furnishing copies of the policies and procedures upon request), responding to client requests for actual proxy votes, and keeping records as required by the rule amendments.

Although a number of advisers indicated that their cost to comply with the proposed recordkeeping requirements would be significant, they did not provide specific data. Advisers with relatively few staff indicated that they believed that complying with the recordkeeping requirements would require them to hire an additional employee, while large advisers chiefly commented on the requirement to maintain records that were material to the voting decision. We have narrowed the recordkeeping requirements from the proposal to incorporate several recommendations from commenters. Under the rule amendments as adopted, advisers may retrieve proxy statements from the Commission's EDGAR system rather than maintaining copies, and may rely on a third party to make and keep copies of proxy statements and records of votes. Further, the final rule substantially narrows the requirements for keeping documents material to the adviser's voting decision. We believe that these changes significantly reduce the costs involved.

V. Paperwork Reduction Act

As set forth in the Proposing Release, new rule 206(4)–6 and the amendments to rule 204–2 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[36] The titles for the collections of information are ''Proxy Voting by Investment Advisers'' and ''Books and Records to be Maintained by Investment Advisers.'' The Commission submitted the new collection of information, Proxy Voting by Investment Advisers, to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection for information for rule 206(4)–6 has been approved by OMB; and OMB control number is 3235–0571 (expires November 30, 2005). The collection of information for rule 204–2 was previously approved under OMB control number 3235–0278 (expires November 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 206(4)–6

Under rule 206(4)–6, an investment adviser that exercises voting authority over clients' securities must adopt written proxy voting policies and procedures, describe the procedures to clients, make them available to clients upon request, and inform clients how they can obtain information about how their securities were voted. We requested comment on the recordkeeping burden of rule 206(4)–6, but received no responses.

In the Proposing Release, we estimated that, on average, an adviser would spend 10 hours annually documenting its proxy voting policies and procedures.[37] For purposes of estimating the number of advisers that would be affected by the new rule, we assumed that all advisers with discretion to manage clients' assets also had discretion to vote clients' securities and would thus be subject to the rule.[38] We received no comments on this assumption. According to our records, 6,203 of the 7,687 total advisers registered with the Commission manage client assets on a discretionary basis.[39] We therefore estimated advisers' total burden for establishing proxy voting policies and procedures to be 62,030 hours.[40]

The rule also requires these advisers to describe their proxy voting policies and procedures to clients. The attendant paperwork burden is already incorporated in a collection of information titled ''Form ADV,'' which is currently approved by OMB under control number 3235–0049.[41] In addition, the rule also requires these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. According to our records, SEC-registered advisers have, on average, 670 clients each; we had estimated that, on average, at least 90 percent of each of these adviser's clients would find the adviser's description of its proxy voting policies sufficiently informative, and ten percent at most (or 67 clients of each adviser on average), would request copies of the full policies and procedures.[42] We had also estimated that it would take an adviser 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 41,560 hours.[43] Advisers

[35] In connection with estimating the annual aggregate burden of the proposed rule and amendments for purposes of the Paperwork Reduction Act, the Commission staff has estimated that advisory firms subject to the rule will incur staff salary and benefit costs aggregating approximately $5,775,000 to prepare and maintain the documents and records required under the proposal. This is an aggregate estimate, and each firm's individual costs in this regard will vary depending on the nature of the firm's advisory business and clients. *See* Proposing Release at n. 45.

[36] 44 U.S.C. 3501 to 3520.

[37] In preparing this estimate, we have taken into account the fact that many advisers subject to ERISA (because they manage plan assets) already have proxy voting procedures in place that can serve as the basis of the adviser's procedures under the new rule.

[38] This estimate potentially overstates the number of advisers that would be subject to the rule. Part 1A of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients. Nor does Part 1A require advisers to describe whether the securities they manage are voting securities as opposed to, for example, government or other debt obligations for which proxy voting issues do not arise.

[39] Based on our records of information submitted to us by investment advisers on Part 1A of Form ADV, 6,203 SEC-registered investment advisers report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[40] $6{,}203 \times 10 = 62{,}030$.

[41] In April of 2000, we proposed amendments to Part 2 of Form ADV that would require investment advisers that vote client proxies to describe their proxy voting policies and procedures in their brochure. *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV,* Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)]. An adviser could satisfy the disclosure requirements under new rule 206(4)–6(b) and (c) by describing its policies and procedures in its brochure. *See supra* note 26. In connection with our April 2000 proposal, when we obtained OMB approval for our amendments to the Form ADV collection that would result from the proposed changes to Part 2, we included the paperwork burden of describing any proxy voting policies and procedures in a firm's brochure.

[42] $670 \times 10\% = 67$.

[43] $0.1 \times 67 \times 6{,}203 = 41{,}560$. In connection with submitting this collection of information to OMB, the Commission has also prepared an estimate of

commented that very few clients currently request copies of proxy voting policies and procedures. We are not changing our original estimates at this time, because advisers may experience an increase in client requests as a result of the disclosure required under the rule.

We are adopting rule 206(4)–6 as proposed. Accordingly, the estimated annual aggregate burden of collection for rule 206(4)–6 remains 103,590 hours.[44] This collection of information is mandatory, and responses to the disclosure requirements are not kept confidential.

B. Rule 204–2

Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records by investment advisers. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[45] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[46]

As amended, rule 204–2 requires registered investment advisers that vote client proxies to maintain specified records with respect to those clients. The records must be maintained in the manner, and for the period of time, as other books and records under rule 204–2(c). Advisers subject to rule 206(4)–6, Proxy Voting by Investment Advisers, must maintain copies of their proxy voting policies and procedures, as well as copies or records of each proxy statement received with respect to the securities of clients for whom the adviser exercises voting authority. These advisers must also maintain a record of each vote cast, as well as certain records pertaining to the adviser's decision on the vote. In addition, the adviser must maintain a record of each written client request for proxy voting information, and all written responses by the investment adviser to written or oral client requests for proxy voting information.

We received numerous comments on how to minimize the burden of this collection of information. In response to these comments, we have substantially modified the rule amendments. Under the adopted amendments to rule 204–2, advisers may use a third party service provider to maintain proxy statements and proxy votes if the service provider undertakes to provide copies of those records promptly on request. Many advisers, particularly advisers that vote proxies on hundreds or thousands of companies, already retain a proxy voting service that they may be able to rely on under the amendments as adopted. In addition, advisers may rely on the Commission's EDGAR system to meet the requirement that they maintain proxy statements. We have also amended the requirement that advisers maintain client requests for proxy voting information, and the advisers' responses, by requiring only the retention of written client requests and of advisers' written responses to any client request, whether oral or in writing.[47] Finally, we narrowed the requirement that an adviser maintain records of documents material to the adviser's decision on how to vote. The revised rule requires advisers to maintain only documents that they created that were material to making the voting decision.[48]

In the Proposing Release, we estimated that the proposed amendments would increase the average annual collection burden of an adviser subject to the amendments by 20 hours, to 215.34 hours.[49] Based on the comments we received, we continue to estimate that the annual collection burden will increase 20 hours per adviser, on average. Many commenters indicated that the recordkeeping burdens as proposed were significant, which we interpreted to mean in excess of our original estimate of 20 hours. However, we believe 20 hours is an accurate estimate of the burden, in light of the changes we have made to the final version of the recordkeeping amendments. As discussed above in connection with proposed rule 206(4)–6, we estimate that 6,203 advisers exercise voting authority on behalf of clients and will thus be subject to this additional burden, for an annual aggregate burden increase of 124,060.[50] The average annual burden for SEC-registered investment advisers under rule 204–2 would accordingly increase from 195.34 hours to 211.48 hours.[51]

VI. Summary of Final Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA''), in accordance with 5 U.S.C. 604, regarding rule 206(4)–6 and amendments to rule 204–2. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule and rule amendments that require certain advisers to adopt proxy voting policies and procedures and maintain certain proxy voting records. The rule is designed to ensure that advisers vote clients' securities in the clients' best interest, and that the adviser addresses how it resolves material conflicts of interest.

The FRFA also discusses the effect of the rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is considered a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last

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the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipate that investment advisers would likely use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be $60, including benefits. We anticipate that investment advisers would likely use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be $10, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be $4,137,400 ((62,030 hours × $60 per hour) + (41,560 hours × $10 per hour) = $4,137,400).

[44] 62,030 × 41,560 = 103,590.

[45] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[46] *See* rule 204–2(e).

[47] ''Written'' policies and procedures would, of course, include documents in electronic format. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery Of Information,* Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24643 (May 15, 1996)].

[48] The proposed amendments would have required a record of all oral and a copy of all written communications received and memoranda or similar documents created by the adviser that were material to making a decision on voting client securities.

[49] 195.34 + 20 = 215.34.

[50] 20 × 6,203 = 124,060. In connection with submitting this collection of information to OMB, the Commission also prepared an estimate of the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipated that investment advisers would likely use compliance clerical staff to maintain the records required under the proposed amendments. We estimated the hourly wage for compliance clerical staff to be $13.20, including benefits. Accordingly, we estimated the annual aggregate cost of collection to be $1,637,592 (124,060 hours x $13.20 per hour = $1,637,592).

[51] (1,501,578.5 current hours + 124,060 additional hours = 1,625,638.5 aggregate burden hours) / 7,687 SEC-registered investment advisers = 211.48.

day of its most recent fiscal year.[52] Of the 6,203 advisers the Commission estimates will be affected by the new rule, the FRFA estimates that 138 are likely to be small entities.

As discussed in the FRFA, the rule and rule amendments do not impose new reporting requirements, but do impose recordkeeping requirements on advisers, including small advisers, that exercise voting authority over client securities. The FRFA notes that advisers, generally vote client proxies only when they are managing client assets on a discretionary basis. Small advisers engage in discretionary asset management on a limited scale, and thus should not have to dedicate significant resources to meet the compliance and recordkeeping requirements in connection with their proxy votes.

The FRFA discusses alternatives considered by the Commission in adopting the new rule and rule amendments that might minimize adverse effects on small advisers, including: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

We believe that the flexibility built into the rule provides for differing compliance requirements for small entities. We do not believe that further clarification, consolidation, or simplification of compliance and reporting requirements for small entities or an exemption from the coverage of the rule for small entities would be consistent with investor protection and the fiduciary duty an adviser owes to its clients. The new rule and rule amendments use performance, rather than design standards, in the sense that that they require policies and procedures to ensure votes are in the best interest of clients, rather than specifying specific elements of the policies and procedures.

The FRFA is available for public inspection in File No. S7–38–02. A copy of the FRFA may be obtained by contacting Daniel S. Kahl, Senior Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0506.

[52] 17 CFR 275.0–7(a).

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[53]

As discussed above, the rule and rule amendments will require investment advisers that have authority to vote clients' securities to adopt and implement written policies and procedures designed to ensure that votes are cast in the clients' best interest.

Although we recognize that compliance programs, including proxy voting programs, may require advisers to expend resources that they could otherwise use in their primary business, we expect that the rules and rule amendments may indirectly increase efficiency in a number of ways. Advisers would be required to carry out their proxy voting in an organized and systematic manner, which may be more efficient than their current approach. Requiring all advisers with voting authority to adopt proxy voting policies and procedures, and meet recordkeeping requirements, may enhance efficiency further by encouraging third parties to create new resources and guidance to which industry participants can refer in establishing, improving, and implementing their proxy voting procedures. In addition, proxy voting policies and procedures may focus advisers on their fiduciary duties in voting client securities, thus increasing efficiency by deterring securities law and common law fraud violations.

Because the rule and rule amendments apply equally to all advisers that exercise voting authority over clients' securities, we do not anticipate that any competitive disadvantages would be created. To the contrary, the rule and rule amendments may encourage competition by raising clients' awareness about advisers' proxy voting and facilitating the differentiation of services offered by various advisers.

We anticipate that the rule and rule amendments may have a limited indirect effect on capital formation. The rule and rule amendments will likely increase investor confidence in investment advisers by making proxy voting more transparent and encouraging increased emphasis on proxy voting by advisers. Because capital formation is influenced by investor confidence in the markets, we believe that the rule could have a positive effect on capital markets.

[53] 15 U.S.C. 80b–2(c). Section 204 of the Advisers Act, which is part of our statutory authority for the proposed recordkeeping amendments for investment advisers under rule 204–2, permits us to prescribe recordkeeping rules that we determine are necessary or appropriate in the public interest or for the protection of investors. Also in this Release, we are adopting new rule 206(4)–6, under other statutory provisions that do not express the same public interest standard, and are not covered by section 202(c). In the interest of comprehensiveness, we nevertheless have included rule 206(4)–6 in our section 202(c) analysis.

VIII. Statutory Authority

We are adopting new rule 206(4)–6 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]. We are adopting amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b–4 and 80b–6(4)].

Text of Rule and Rule Amendments

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–2 is amended by:

a. Redesignating paragraph (c) introductory text, paragraphs (c)(1) and (c)(2) as paragraph (c)(1) introductory text, paragraphs (c)(1)(i) and (c)(1)(ii) respectively;

b. Adding new paragraph (c)(2); and

c. Revising paragraph (e)(1).

The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(c) * * *

(2) Every investment adviser subject to paragraph (a) of this section that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain the following:

(i) Copies of all policies and procedures required by § 275.206(4)–6.

(ii) A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a copy of a proxy statement (provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request) or may rely on obtaining a copy of a proxy statement from the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

(iii) A record of each vote cast by the investment adviser on behalf of a client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a record of the vote cast (provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request).

(iv) A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.

(v) A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any (written or oral) client request for information on how the adviser voted proxies on behalf of the requesting client.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

3. Section 275.206(4)–6 is added to read as follows:

§ 275.206(4)–6 Proxy voting.

If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), for you to exercise voting authority with respect to client securities, unless you:

(a) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(b) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(c) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

By the Commission.

Dated: January 31, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2952 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
February 7, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 234
FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 234

[Docket No. FR–4713–F–02]

RIN 2502–AH80

FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program

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

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations with respect to condominium ownership mortgage insurance to provide that the date of recordation for purposes of obtaining Federal Housing Administration (FHA) approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the section 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property. The Department believes that the change will improve homeownership opportunities through increased FHA activity under the section 234(c) program. This final rule follows publication of a proposed rule on August 21, 2002. One comment was received on the rule, and it supported the rule. Accordingly, the Department is adopting the proposed rule without change.

DATES: Effective Date: March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2121, ext. 2204 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—The August 21, 2002, Proposed Rule

The Department published a proposed rule on August 21, 2002 (67 FR 54316), announcing its intention to amend its regulation that implements section 234(c) of the National Housing Act (12 U.S.C. 1715y(c)) (the Act). Section 234 (c) authorizes the Secretary to insure an individual mortgage on a one-family unit in a multifamily project and an undivided interest in the common areas and facilities that serve the project, provided certain conditions are met. Section 234(k) of the Act provides that, before FHA mortgage insurance can be placed on a unit in a condominium project converted from rental property, at least one year must elapse between the date of conversion and the date application for insurance is made. Conversion is not defined in the Act. HUD's regulation at 24 CFR 234.3 defines conversion as the date on which all documents necessary to create a condominium under state law (and under local law) have been recorded.

Under the Commonwealth of Puerto Rico's inscription law, the legal documents to create a condominium regime are ''presented'' to the Commonwealth Office of the Property Registry, which closely reviews the documents for sufficiency and accuracy. If the documents are found to be in compliance, or can be corrected to be brought into compliance, the documents then are inscribed or recorded. When the condominium documents are presented, a condominium regime is established. From the time the condominium legal documents are presented for inscription, the developer/proponent is responsible for paying assessments and costs associated with operating and maintaining the project as a condominium. This can result in substantial cost to a developer prior to the project's eligibility for FHA mortgage insurance.

The Department proposed revising the definition of ''conversion'' in 24 CFR 234.3 to provide that, in the case of Puerto Rico, conversion is defined as the date on which a condominium development's legal documents (which must be in compliance with applicable law) are ''presented'' for inscription (*i.e.*, recordation) to the Commonwealth Registry under Puerto Rico's inscription process. This revision would allow the Department to approve condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the project on the basis of evidence of presentment of legal documents and the parties' obtaining title insurance on each unit.

II. This Final Rule

This final rule follows publication of the August 21, 2002, rule, which invited public comment on the proposed revision. HUD received one comment on the rule. The commenter supported the proposed revision. The commenter wrote that the rule will relieve Puerto Rican lenders from the heavy burden of holding section 234(c) loans without insurance, while waiting for documents to be recorded to meet the current definition of ''conversion.'' Thus, the change will expedite placement of mortgage loans in the secondary mortgage market. The commenter also noted that the risks to HUD are minimal by adopting this rule. Under the condominium regime, legal documents undergo close scrutiny from lawyers who are experts in condominium law and hired by developers and bankers to protect their individual interests. The commenter added that the rule would expedite the conversion to condominiums of many section 8 rental projects in Puerto Rico. According to the commenter, the rule also will stimulate developers and lenders to build more condominium units in areas with high land prices, thus allowing many families the dream of homeownership.

Accordingly, HUD has decided to adopt the August 21, 2002, proposed rule without change.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U. S. C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with

regard to small entities, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments, nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for 24 CFR part 234 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 234 to read as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535 (d).

2. The definition of ''conversion'' in § 234.3 is revised to read as follows:

§ 234.3 Definitions.

* * * * *

Conversion means the date on which all documents necessary to create a condominium under state law (and under local law, where applicable) have been recorded, except that in the case of the Commonwealth of Puerto Rico, *conversion* is defined as the date on which the legal documents (which must be in compliance with applicable law) to create a condominium are presented for inscription (*i.e.*, recordation) to the Commonwealth Office of the Property Registry.

* * * * *

Dated: January 27, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–2972 Filed 2–6–03; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
February 7, 2003

Part V

Department of Education

Submission of Data by State Educational Agencies; Notice

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year 2002 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 2002. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2004 appropriated funds.

DATES: The date on which submissions will first be accepted is March 17, 2003. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 2, 2003.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, Attention: Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web using the interactive form at *http://www.census.gov/govs/www/nperfs.html.* If the web form is used, it includes a certification page that can be printed and signed by the authorizing official. This signed page must be mailed within five business days of web form data submission.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (eastern time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD 20772.

If an SEA's submission is received by the Bureau of the Census after September 2, 2003, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.

2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, Attention: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002 (Pub. L. 107–279), 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (currently 20 U.S.C. 8801(12)).

In addition to utilizing the SPPE data as informative information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including title I of the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act (title I), Impact Aid, and Indian Education. Other programs such as the Educational Technology State Grants (title II, part D), the Education for Homeless Children and Youth Program under title VII of the McKinney-Vento Homeless Assistance Act, the Teacher Quality State Grants (title II, part A) Program, and the Safe and Drug-Free Schools and Communities (title IV, part A) Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State title I allocations.

In January 2003, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 17, 2003, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 17, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 2, 2003.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 2, 2003, as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 2, 2003, the data may also be too late to be included in the final NCES published dataset.

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Authority: 20 U.S.C. 9003(a).

Dated: February 4, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–3067 Filed 2–6–03; 8:45 am]

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Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)

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